FILED, Clerk of the Appellate Division, April 24, 2025, **A-003009-23**, AMENDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-3009-23-T4

WILLIAM J. SANTO, AS ADMINISTRATOR AND ADMINISTRATOR PROSEQUENDUM, OF THE ESTATE OF MARGARET E. SANTO

Plaintiff

v.

MEADOWVIEW NURSING AND REHABILITATION CENTER, AN UNINCORPORATED BUSINESS ENTITY; ATLANTIC COUNTY, A GOVERNMENTAL ENTITY; MICHELE SAVAGE, AN INDIVIDUAL

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ATLANTIC COUNTY

Docket No. ATL-19-20

Civil Action

ON APPEAL FROM THE MARCH 26, 2024 ORDER FOR JUDGMENT AND THE MAY 10, 2024 ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT/NEW TRIAL

(Sat Below: Hon. Danielle Walcoff)

BRIEF ON BEHALF OF APPELLANT/ DEFENDANT ATLANTIC COUNTY

Timothy B. Crammer, Esq.
Attorney ID: 040862011
tcrammer@dughihewit.com
Of counsel and on the brief

DUGHI, HEWIT & DOMALEWSKI, P.C.
508 New Jersey Avenue, Suite B-3
Absecon, New Jersey, 08201
609-677-6996

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PROCEDURAL HISTORY

In this personal injury action, the plaintiff, William J. Santo as the Administrator and Administrator *ad Prosequendum*, of the Estate of Margaret E. Santo, alleged that Meadowview Nursing and Rehabilitation, an unincorporated entity and licensed nursing home operated by Atlantic County, Atlantic County, and Michelle Savage violated the Nursing Home Rights and Responsibilities Act, N.J.S.A. 30:13-1 et seq., and committed medical negligence while caring for the plaintiff's decedent. **(Da5)**[1] The plaintiff also asserted a claim under the Wrongful Death Act based on the defendants' alleged negligence. (**Da8)**

Discovery proceeded over the course of two years. On February 23, 2024, the defendants retained my office as co-counsel and lead trial counsel**.** (**Da17)**

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1 The Complaint named Atlantic County, Meadowview Nursing and Rehabilitation Center, and Michelle Savage as defendants. Meadowview is an unincorporated business entity operated by Atlantic County. They are referred to collectively as defendants in the jury charge and on the verdict sheet. Atlantic County is entirely responsible for the judgment. Michele Savage, Meadowview's Licensed Administrator, was dismissed upon consent of the parties prior to verdict. **(Da16)**

On March 8, 2025, the defendants filed a Motion in Limine seeking to bar evidence and testimony that Ms. Santo's room was as cold as an "icebox." On March 18, 2024, the Court denied that motion**. (Da18)**

Trial commenced on March 18, 2024.[2] Prior to opening statements, the plaintiff counsel stipulated that he was dismissing the medical negligence claims in Count One of the Complaint. **(1T4-25 to 1T5-3)[3]**

Accordingly, at the time of opening statements, the only remaining claim was that the defendants violated the plaintiff's decedent's rights under the Nursing Home Rights and Responsibilities Act, specifically N.J.S.A. 30:13-5(j).

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[2] The trial transcripts are designated and cited as follows:

1T – March 18, 2024 Trial Day
2T - March 19, 2024 Trial Day
3T – March 20, 2024 Trial Day
4T – March 21, 2024 Trial Day
5T – March 22, 2024 Trial Day
6T – March 25, 2024 Trial Day
7T – March 26, 2024 Trial Day

[3] The plaintiff previously dismissed Count Two of the Complaint, which was a claim under the Wrongful Death Act during oral argument on the parties' motions in limine.

On March 21, 2024, the plaintiff rested and the defendants moved for judgment pursuant to Rule 4:40-1. The trial court reserved judgment pursuant to Rule 4:40-2. **(4T117-20 to 4T118-19)**

On March 25, 2024, the defense rested and the trial court conducted a charge conference. Various changes were made to the damages portion of the jury charge and the parties consented to the following language:

> In the event you find in plaintiff's favor as to a violation of the N.J.N.H.A., you may award damages that would fairly and reasonably compensate plaintiff's damages resulting from the violation of plaintiff's nursing home rights.
>
> **[6T254-19 to 6T254-23]**

The jury began deliberations on March 26, 2024. During their deliberations, the jury submitted two questions to the judge. The first question was a request for a copy of N.J.S.A. 30:13-5(j). **(7T79-24 to 7T80-21)** The parties and the trial court agreed that the jury wanted to read N.J.S.A. 30:13-5(j), and the parties consented to the trial court providing the jury with a copy of N.J.S.A. 30:13-5(j). **(7T79-24 to 7T80-21)**

The second question was: "requesting guidance on defining damages." "Is there a criteria used for monetary award?" **(7T82-7 to 7T82-10)** The trial court proposed re-reading the portion of the charge relevant to damages (beginning with "in the event you find in plaintiff's favor"). **(7T82-11 to 7T82-17)** The parties agreed.

That same day, the jury returned a verdict in favor of the plaintiff (8-0 on liability; 7-1 on damages) and awarded $450,000 in damages. The trial court subsequently entered an Order for Judgment for the plaintiff in that amount. **(Da19)**

On April 16, 2024, the defendants filed a Motion for Judgment Notwithstanding the Verdict pursuant to Rule 4:40-2 or, alternatively, a new trial pursuant to Rule 4:49-1.

With respect to the former, the defendants argued that judgment notwithstanding the verdict was appropriate because no rational juror could conclude from the evidence that the defendants violated N.J.S.A. 30:13-5(j).

With respect to the latter, the defendants argued that they were entitled to a new trial because: (1) the trial court erred by permitting EMT Damore to testify that the room was as cold as an "icebox"; (2) the finding that the defendants violated the Nursing Home Act was against the weight of the evidence; and (3) the damage award was against the weight of the evidence.

On May 10, 2024, the trial court entered an Order and Memorandum of Decision denying the defendants' motion. **(Da20)** On May 31, 2024, the defendants filed their Notice of Appeal. **(Da49)** On June 17, 2024, the defendants filed an Amended Notice of Appeal. **(Da53)**

STATEMENT OF THE FACTS

Plaintiff's decedent, Margaret Santo, was a resident at Meadowview Nursing and Rehabilitation.

On February 19, 2018, LPN Takako Potts was Ms. Santo's assigned nurse and initially saw her at 9:00AM that day to administer morning medication. **(4T132-14 to 4T133-25)** LPN Potts did not perceive the room to be cold when she entered and the outdoor window was not open.

(4T132-14 to 4T133-25) LPN Potts elected to withhold administering Ms. Santo's Klonopin, a medication that causes sedation, because Ms. Santo had trouble arousing. **(4T132-22 to 4T132-25)**

At approximately 1:15PM, LPN Potts returned to Ms. Santo's room to perform a reassessment. **(4T134-1 to 4T134-6).** Her reassessment revealed that Ms. Santo was still difficult to arouse. **(4T134-13 to 4T134-14).** LPN Potts proceeded to take Ms. Santo's temperature, which revealed a temperature of 95.6 degrees Fahrenheit and skin cool to the touch **(4T134-15 to 4T134-22).** Neither finding was present at 9:00AM. **(4T135-16 to 4T135-19)**. At the time of the reassessment, the windows to the room remained closed, the room was not cold, and Ms. Santo's roommate was present in the room. **(4T139-7 to 4T140-2)**

LPN Potts notified her supervisor of the findings, who then instructed LPN Potts to call 911. **(4T140-3 to 4T140-9)**. LPN Potts met the responding EMTs in Ms. Santo's room and provided them with Ms. Santo's vital signs, including her temperature. **(4T140-12 to 4T140-21)**. LPN Potts recalls that after hearing Ms. Santo's temperature, one of the responding EMTs commented, "Oh the room is cold." **(4T140-18 to**

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4T140-21). In response to the EMTs comment, LPN Potts checked the room's thermostat, which was set to 70 degrees. **(4T140-18 to 4T140-21).**

EMT Damore was one of the EMTs who responded to LPN Potts's 911 call. EMT Damore performed an assessment on Ms. Santos and transported her to the hospital. **(2T107-16 to 2T108-11).** He recalled telling LPN Potts upon arrival that Ms. Santo's room was cold. **(2T92-9 to 2T922-10).** Specifically, he thought that the room was colder than 70 degrees Fahrenheit but could not determine whether the room was colder than 60 degrees Fahrenheit. **(2T121-14 to 2T121-23)**. EMT Damore informed the emergency department personnel that Ms. Santo's room was an icebox. **(2T122-12 to 2T123-1)** He confirmed that during transport to the hospital, the back of the ambulance would have been kept at 72 degrees Fahrenheit. **(2T130-5 to 2T130-21)**.

Upon arrival at the hospital, Mrs. Santo's rectal temperature was 89.9. **(3T31-6 to 3T31-25)** Dr. May, Ms. Santo's emergency room doctor, diagnosed Ms. Santo with hypothermia and admitted her to the hospital for further warming and to determine the cause of her hypothermia.

(3T54-19 to 3T54-25) Dr. May never spoke directly with anyone at Meadowview. **(3T55-1 to 3T55-3)**

Ultimately, Shore Medical Center discharged Ms. Santos to a different long-term care facility, where she remained until she died on March 12, 2018.

ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (Da20)

The defendants respectfully submit there was insufficient evidence to support a verdict that the defendants violated N.J.S.A. 30:13-5(j).

A. STANDARD OF REVIEW (not raised below)

"In reviewing whether the trial court properly denied (a motion for) judgment notwithstanding the verdict, *R.* 4:40-2, (the appellate court) must accept as true all evidence supporting the position of the party defending against the motion and must accord that party the benefit of all legitimate inferences which can be deduced [from the evidence]." Besler

v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 572 (2010) (bracketed alterations in original, parenthetical alterations supplied)(internal quotations omitted); Delvecchio v. Twp. of Bridgewater, 224 N.J. 559, 582 (2016).

Stated differently, the appellate court must determine whether the "jury rendered a verdict that is sustainable on the evidence." Besler, 201 N.J. at 575 (2010).

B. ARGUMENT (Da20)

1. EMT Damore's testimony was insufficient to sustain a jury verdict that the defendants violated N.J.S.A. 30:13-5(j) by permitting the room to become so cold that Ms. Santo became hypothermic.

While acknowledging that EMT Damore could not testify that the room was colder than 60 degrees Fahrenheit, the trial court noted that EMT Damore also provided the following testimony regarding his observations of Ms. Santo's room temperature: (1) her room was between 60 and 70 degrees; (2) her room was cold; (3) even with him wearing a hoody and jacket, her room was cold; (4) that made him annoyed and/or upset with [defendant's] staff; (5) he immediately felt the cold walking

from the internal hallway into Ms. Santo's room; and (6) the temperature in Ms. Santo's room was closer to the temperature from the cold outside than the temperature in the nursing home hallway. **(Da26-27)**

The defendants submit that the only facts and reasonable, rational inferences that can be drawn from the testimony cited above relevant to the room's temperature are that EMT Damore perceived that: (1) the room was cold; (2) the room was colder than the hallway; (3) the room temperature was closer to the outdoor temperature than the hallway temperature; and (4) that the room was between 60 and 70 degrees.

Additionally, a jury could conclude that EMT Damore perceived "cold" to be a temperature between 60- and 70-degrees Fahrenheit. And that EMT Damore believed that temperature range to be as cold as an "icebox."

Respectfully, none of those facts, or reasonable inferences from those facts, support a jury verdict that the defendants violated N.J.S.A. 30:13-5(j) by permitting Ms. Santo's room to become so cold that she became hypothermic.

Simply put, no rational juror could conclude from EMT Damore's testimony that Ms. Santo's room was cold enough for her to become hypothermic.

2. There was no other evidence or testimony sufficient to sustain a jury verdict that the defendants violated N.J.S.A. 3-:13-5(j) by permitting the room to become so cold that Ms. Santo became hypothermic

The trial court noted that even without reference to EMT Damore's testimony, there was sufficient evidence through expert testimony to sustain a verdict that the defendants violated Ms. Santo's right to a safe and comfortable living environment under N.J.S.A. 30:13-5(j) by allowing her room to become so cold that she developed hypothermia. **(Da26-27)**

Specifically, the trial court cited nurse Tache's, the plaintiff's nursing expert, testimony that state regulations required the ambient room temperature to be kept between 71 and 81 degrees and any temperature below 71 degrees, based on Ms. Santo's individual condition, violated her rights under N.J.S.A. 30:13-5(j). **(Da30)**

Similarly, the court also referenced Dr. Starer's testimony, that within a reasonable degree of medical probability the room's cold temperature caused Ms. Santo's hypothermia, as sufficient support to support a verdict that the defendants violated Ms. Santo's rights under N.J.S.A. 30:13-5(j). **(Da28-29)**

N.J.S.A. 30:13-5(j) provides, in pertinent part, that every nursing home resident shall, "[h]ave the right to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident . . . ."

The statute does not define the phrase "safe and decent living environment" or the word "dignity." And although our evidence rules do not allow expert witnesses to define statutory phrases, they do allow expert witnesses to cite federal and state regulations in support of the expert's opinion regarding a deviation from the standard of care, and to opine that deviations from the standard of care violate N.J.S.A. 30:13-5(j). See, e.g., Ptaszynski v. Atl. Health Sys., 440 N.J. Super. 24, 37 (App. Div. 2015).

Respectfully, the trial court did not consider other portions of nurse Tache's and Dr. Starer's testimony that, when considered, clarify the testimony relied upon by the trial court and demonstrate that there was insufficient expert testimony to support a violation of New Jersey regulations or the standard of care, generally, with respect to Ms. Santo's room temperature. Moody v. Voorhees Care & Rehab. Ctr., 2021 N.J. Super. Unpub. LEXIS 267, *26 (App. Div. 2021) (unpublished and cited for its persuasive rather than precedential authority) (attached at **Da58**)("[T]he NHA established standards of care for the treatment of such facilities' residents. The breach of those standards also requires expert explanation as the subject matter is beyond the "ken of the average juror.") (internal citations and quotations omitted).

Specifically, nurse Tache testified, and it is undisputed, that no one knows what the temperature was in Ms. Santo's room that day. **(4T82-22 to 4T82-25)** Nurse Tache made it clear that she would need to know the room's precise temperature to determine whether the defendants violated state regulation or the standard of care. **(4T75-22 to 4T76-1)**

Thus, her testimony in that regard was conditional on the plaintiff proving the actual temperature in the room. The plaintiff did not. Because the plaintiff did not prove the condition precedent for nurse Tache's opinion, her opinion is irrelevant. See, N.J.R.E. 703; see, e.g., Townsend v. Pierre, 221 N.J. 36, 55 (2015) ("An expert's conclusion is excluded if it is based merely on unfounded speculation and unquantified possibilities.") (internal quotations and citations omitted). Dr. Starer's opinion was similarly conditioned on the room being below 71 degrees, a condition the plaintiff did not prove through Dr. Starer's testimony. **(3T86-21 to 3T87-2).**

Because there was no reliable expert testimony supporting a jury verdict that the defendants violated Ms. Santo's rights under N.J.S.A. 30:13-5(j) by allowing her room to become so cold that she became hypothermic, the trial court erred by relying on that testimony as a basis to deny the defendants' Motion for Judgment Notwithstanding the Verdict. Besler, 201 N.J. at 575 (2010).

3. The Trial Court erred by relying on Nurse Tache's other opinions as sufficient evidence to sustain a verdict that the defendants violated N.J.S.A. 13:30-5(j)

The trial court also erred by relying on other opinions by nurse Tache as proof of sufficient evidence supporting a violation of N.J.S.A. 30:13-5(j).

Specifically, the trial court found that nurse Tache also opined that the defendants (1) failed to notify Ms. Santo's physician when they held her Klonopin; (2) failed to warm Ms. Santo; and (3) used a personal rather than facility-provided thermometer to measure Ms. Santo's temperature. **(Da32)** Each of these opinions, per the trial court, provide an independent basis to support a finding that the defendants violated N.J.S.A 30:13-5(j).

With respect to the failure to notify opinion, the trial court, respectfully, failed to consider the entirety of nurse Tache's testimony, which shows that nurse Tache could not support that opinion.

Nurse Tache testified on direct examination that the defendants deviated from the standard of care by failing to notify Ms. Santo's physician that they withheld her Klonopin prior to February 19, 2018.

Specifically, she opined that a nurse has "latitude" on when to call a physician regarding withholding medication and that the standard of care required the defendants to notify Ms. Santo on the fourth day of holding prescribed medication. **(4T90-20 to 4T90-25)**

On cross examination, nurse Tache testified as follows:

Q. And you're telling this jury that even though on the fourth day of holding the medication which is the first time we need to notify the physician, that we called him, we told him the patient was not arousable, we told him we didn't give the Klonopin that day, and Tache - we told him that the temperature was low and we're sending her to the hospital and that's a deviation from the standard of care?

A. Again, we don't know about the four hour window from the time that she held the medication until later in the day because we don't have a time stamp on when she took the vital signs.

Q. Okay. But if we have a time stamp on the vital signs you already agreed your opinion would change, right?

A. Yes.

[4T92-12 to 4T93-11][4]

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4 The "four-hour window" mentioned by nurse Tache refers to the time between when nurse Potts withheld the Klonopin and when she contacted Ms. Santo's doctor. The four-hour window is irrelevant to nurse Tache's opinion regarding withholding Klonopin, because that opinion is based on the day notification was made to the

Thus, on cross-examination, nurse Tache could not support, and essentially abandoned, her opinion that the defendants failed to timely notify Ms. Santo's physician that they held her Klonopin.

With respect to the failure to timely transfer opinion, which the court refers to as the failure to warm opinion, nurse Tache opined that the defendants deviated from the standard of care by not timely transferring Ms. Santo to the emergency room for warming after discovering that she was cold. **(4T22-15 to 4T22-22)**

Specifically, nurse Tache testified as follows:

> **Q.** Did you review the time line of events as they occurred through the notes on February 19, 2018?
>
> **A.** Well, there's only one nurse's note which was time stamped 1:30 in the afternoon, but the note references that the morning medication was held at 9:00 a.m. Generally in the nursing home industry and by regulation a medication, if it's ordered for 9:00 a.m. could be administered as early as an hour before or an hour after, so it could be 8:00 a.m. to 10:00 a.m. So based on the fact that the nurse documented that she held that morning dose of Klonopin which was scheduled

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physician, not the time of day the notification was made. The four-hour window is relevant to nurse Tache's opinion regarding failing to timely transfer Ms. Santo to the hospital, which is discussed in the forthcoming paragraphs.

> to be administered at 9:00 a.m., and the note was written at 1:30, that she contacted the doctor, there's possibly a four-hour window that Ms. Santo was not well before the nurse called the doctor.
>
> **[4T46-18 to 4T47-9]**

After acknowledging that she did not know what time LPN Potts discovered that Ms. Santo was cold-to-the-touch or when she took her temperature **(4T88-3 to 4T88-5),** nurse Tache conceded that LPN Potts met the standard of care if the evidence revealed that LPN Potts first discovered that Ms. Santo was cold, and took her temperature at 1:15PM and, by 1:30PM, had called 911. **(4T89-10 to 4T89-14).**

In that regard, LPN Potts testified that she first saw Ms. Santo at 9:00AM, which is when she withheld her Klonopin because Ms. Santo was lethargic. **(4T132-14 to 4T133-22**). She returned to the room at approximately 1:15PM, which was the first time that she discovered Ms. Santo was cool to the touch and when she took Ms. Santo's temperature. **(4T134-1 to 4T134-22**). After assessing Ms. Santo at 1:15PM, LPN Potts testified that she immediately notified her supervisor, who instructed her to call 911, and that she immediately followed that instruction. **(4T139-7**

to 4T140-11). Based on LPN Potts' testimony, the condition precedent for nurse Tache's opinion was not met.

In fact, based on nurse Tache's concession on cross-examination that LPN Potts met the standard of care if she first discovered Ms. Santo's abnormal temperature at 1:15PM, LPN Potts' testimony completely refutes nurse Tache's opinion regarding delayed transfer to the hospital. Accordingly, it could not serve as a basis to find that the defendants violated Ms. Santo's rights under N.J.S.A. 30:13-5(j).

Finally, the trial court concluded that nurse Tache's opinion that the standard of care requires nursing homes to provide thermometers to measure residents' temperatures, coupled with LPN Potts' testimony that she used her own thermometer to take Ms. Santo's temperature, was sufficient to support a verdict that the defendants violated Ms. Santo's rights under N.J.S.A. 30:13-5(j). **(Da33)**

Respectfully, although nurse Tache testified that the standard of care required facilities to provide thermometers **(4T45-13 to 4T45-24)**,

the plaintiff never established that the defendants did not provide thermometers.

First, LPN Potts never testified that she used her own thermometer because the defendants did not provide one. Second, Joan Foltz, the defendants' then-unit manager for Ms. Santo's floor **(5T7-21 to 5T8-1)**, testified that Meadowview provided all necessary equipment, including "ear" thermometers. **(5T48-3 to 5T48-22).**

The plaintiff did not elicit any testimony or evidence to refute Ms. Foltz's testimony. Accordingly, the plaintiff did not prove that Meadowview violated N.J.S.A. 30:13-5(j) by not providing thermometers.

Based on the foregoing, the defendants respectfully submit that the trial court erred in denying their JNOV motion and request that the Appellate Division reverse the trial court's order and enter an order for judgment notwithstanding the verdict in the defendants' favor.

II.

THE TRIAL COURT ERRED BY DENYING THE DEFENDANTS' MOTION FOR A NEW TRIAL (Da20)

The defendants respectfully submit that a new trial is required on three grounds: (1) the trial court erred in allowing EMT Damore to offer improper lay opinion testimony, which resulted in prejudice to the defendants; (2) the verdict that the defendants' violated Ms. Santo's rights under the N.J.S.A. 30:13-5(j) was against the weight of the evidence; and (3) the damage award was against the weight of the evidence.

A. STANDARD OF REVIEW (not raised below)

Rule 4:49-1 states, in pertinent part, that:

> A new trial may be granted to all or any of the parties and as to all or part of the issues on motion made to the trial judge. . . . The trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.

"A trial court's obligation on a motion for a new trial involves a process of evidence evaluation, --'weighing.' The object is to correct clear error or mistake by the jury. The court is to take into account, not only tangible factors relative to the proofs as shown by the record, but also

appropriate matters of credibility, generally peculiarly within the jury's domain, and the intangible 'feel of the case' which it has gained by presiding over the trial." Kita v. Borough of Lindenwold, 305 N.J. Super. 43, 49 (App. Div. 1997) (internal quotations and citations omitted), citing, Dolson v. Anastasia, 55 N.J. 2, 6 (1969).

"The [ultimate] question is whether the result strikes the judicial mind as a miscarriage of justice." Dolson, 55 N.J at 7 (1969). A miscarriage of justice occurs when there is a "'pervading sense of wrongness needed to justify [an] appellate or trial judge undoing of a jury verdict . . . [which] can arise . . . from manifest lack of inherently credible evidence to support the finding, obvious overlooking or under-valuation of crucial evidence, [or] a clearly unjust result. . .'" Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (alterations in original). A new trial is also required "if the judge concludes that [their] erroneous trial rulings resulted in prejudice to a party." Pressler & Verniero, Current N.J Court Rules, Comment R. 4:49-1 (Gann).

"The standard of review on appeal from decisions on motions for a new trial is the same as that governing the trial judge -- whether there was

a miscarriage of justice under the law." Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. at 522 (2011) (internal citations omitted).

B. ARGUMENT (Da20)

1. The trial court erred by permitting EMT Damore's testimony that the room was an "icebox"

As discussed in in Konop v. Rosen, 425 N.J. Super. 391 (App. Div. 2012), the Appellate Division applies an abuse of discretion standard when reviewing evidentiary rulings:

> In reviewing a trial court's evidential ruling, an appellate court is limited to examining the decision for abuse of discretion. The latitude initially afforded to the trial court in making a decision on the admissibility of evidence -- one that is entrusted to the exercise of sound discretion -- requires that appellate review, in equal measures, generously sustain that decision, provided it is supported by credible evidence in the record. However, when the trial court fails to apply the proper test in analyzing the admissibility of proffered evidence, our review is de novo.
>
> [Id. at 401 (internal citations, quotations, and alterations omitted)].

Under an abuse of discretion standard, "[a] trial court's evidentiary rulings are entitled to deference absent a showing of an abuse of discretion, *i.e.*, there has been a clear error of judgment." State v.

Nantambu, 221 N.J. 390, 402 (2015) (internal citations and quotations omitted).

However, the Appellate Division does not defer to a trial court's application of the law to those facts:

> [Although] we uphold the facts found by the motion judge to the extent they are supported by sufficient credible evidence in the record, [we] apply the law as we understand it to those facts.
>
> [State v. Nantambu, 221 N.J. at 402-403 (2015) (internal quotations and citations omitted)].

Over the defendants' objection, plaintiff elicited EMT Damore's lay opinion that Ms. Santos's room was as cold as an "icebox," and introduced documents into evidence containing EMT Damore's opinion that Ms. Santos's room was an "icebox." The defendants respectfully submit that the court's decision to allow EMT Damore to testify that the room was an "icebox" was an abuse of discretion. Although the trial court based its decision on sound facts, it erred in its application of the law to those facts. State v. Nantambu, 221 N.J. at 402-403 (2015)

N.J.R.E. 701 permits a lay opinion only when the testimony is rationally based on the witness's perception and will assist in

understanding the witness's testimony or in determining a fact at issue. "Before lay opinion may be allowed, the judge must make the preliminary determinations that the opinion is rationally based on the witness's perceptions, and that the opinion will be of aid to the triers of fact." Pressler & Verniero, Current N.J Evidence Rules, Comment R. 701 (Gann). A lay witness' perception "rests on the acquisition of knowledge through use of one's sense of touch, taste, sight, smell or hearing." State v. McLean, 205 N.J. 438, 457, (2011).

To be rational, a lay opinion must be the type of opinion a reasonable person would form based on their observation or perception. See, Merriam-Webster, Definition of Rational, merriam-webster.com/dictionary/rational (last accessed April 16, 2025) ("having reason or understanding," and "relating to, based on, or agreeable to reason: reasonable.").

In their brief in support of their motion for a new trial, the defendants highlighted that EMT Damore testified that the plaintiff's room was colder than 70 degrees but was unable to say whether the room was colder than 60, 50, or 40 degrees. **(2T121-14 to 2T121-24)**

The defendants argued that this testimony established that EMT Damore's lay opinion that the room was as cold as an "icebox" was impermissible because it was not rationally based on the witness's perception. Pressler & Verniero, Current N.J Evidence Rules, Comment R. 701 (Gann).

EMT Damore perceived that the room was colder than 70 degrees but could not say whether the room was colder than 60 degrees. Thus, the only conclusion that could be rationally drawn from EMT Damore's testimony was that he perceived the temperature in the room to be between 60 and 70 degrees. EMT Damore's opinion that a room was as cold as an "icebox" does not rationally relate to that perception. In other words, no rational person would describe a room that was between 60 and 70 degrees as being an "icebox."

Because EMT Damore's description of the room as an "icebox" was not rationally related to his perception, it could not aid the juror's in understanding his testimony. In fact, by permitting EMT Damore to testify that the room was as cold as an "icebox," the trial court confused the jury

because the word "icebox" does not accurately describe EMT Damore's perception. N.J.R.E. 701.

Because the Appellate Division does not defer to the trial court's application of the law to the facts when reviewing evidentiary rulings, State v. Nantambu, 221 N.J. at 402-403 (2015), the defendants respectfully submit that, for the reasons set forth above, the Appellate Division should hold that the trial court erred by permitting EMT Damore to testify that Ms. Santo's room was as cold as an "icebox" based on an improper application of N.J.R.E. 701 and that this error regarding testimony involving a key issue in the case, the room's temperature, so severely prejudice the defendants that it warrants a new trial. See, e.g., State v. Coley, 2011 N.J. Super. Unpub. LEXIS 2518, *9 (App. Div. 2011) (unpublished) (cited for persuasive and not precedential authority) (attached at **Da67**) (overturning a verdict based on an impermissible lay opinion regarding one of the central issues in the case).

2. A new trial is warranted because the jury's determination that the defendants violated Ms. Santo's rights under N.J.S.A. 30:13-5(j) was against the weight of the evidence.

The jury heard the following testimony and received the following evidence regarding the room's temperature:

1. Testimony from EMT Damore that the room was colder than 70 degrees. **(2T121-14 to 2T121-18)** EMT Damore further testified that although he did not know if the room was colder than 60 degrees it was nonetheless an icebox. **(2T122-22 to 2T122-24)** He also characterized the room as cold. **(2T121-24 to 2T122-9)**

2. Testimony from Dr. May, Shore Medical Center's ER physician, that EMT Damore reported to her that the room was an icebox, but that she had no other knowledge of the room's temperature. **(3T24-5 to 3T25-15)**

3. Testimony from Meadowview's administrator, Michelle Knudsen, that there were no alerts on the building's HVAC system indicating that the system was malfunctioning, **(6T151-23 to 6T152-2),** that her investigation did not conclude that the HVAC was not working **(6T148-24 to 6T153-14)**, and that she would have self-reported Meadowview to the Department of Health if the HVAC malfunctioned and caused plaintiff's decedent's hypothermia. **(6T170-2 to 6T170-22)**

4. Testimony from the Atlantic County Facility Department supervisor Christopher Palermo confirming that no one reported an HVAC issue on Ms. Santo's floor at Meadowview in February. **(5T87-25 to 5T93-16).** Ms. Knudsen also testified that they did not have to move Ms. Santo's roommate to another room because of a malfunctioning HVAC system. **(6T154-3 to 6T154-5)**

5. Testimony from LPN Potts, the nurse treating Ms. Santo, that Ms. Santo's room was not cold, that her window was not open, that the thermostat was set to 70 degrees and was not adjusted by the EMTs,

and that Ms. Santos roommate did not become hypothermic. **(4T139-7 to 4T140-2)**

6. Testimony from Stacie Bates, the Director of Nursing, that no one reported any issues with room temperature in Ms. Santo's room and that her inspections of the facility did not reveal any issues with the HVAC on Ms. Santo's floor. **(5T104-24 to 5T105-1)**

7. Testimony from Joan Foltz, the unit manager on Ms. Santo's floor, that the room was not cold when she responded to assist LPN Potts when Ms. Santo was discovered to be hypothermic. **(5T16-17 to 5T16-23)**

8. Testimony from the plaintiff's medical expert, Dr. Starer, that Ms. Santo's body temperature decreased after she was removed from the nursing home, **(3T146-18 to 3T146-22),** which he acknowledged was the opposite of what would occur in hypothermia due to environmental exposure. **(3T104-17 to 3T107-5)**

9. Testimony from the plaintiff's medical expert, Dr. Starer, that an individual's body temperature can drop several degrees as part of the "dying process" and regardless of environmental temperature. **(3T141-14 to 3T142-20)**

On a motion for new trial based on a party's assertion that the jury's verdict was against the weight of the evidence, the court's function is to consider both tangible and credibility factors, and the feel of the case to determine if the jury's verdict was a clear error or mistake. <u>Kita v. Borough of Lindenwold</u>, 305 N.J. Super. 43, 49 (App. Div. 1997).

When deciding a new trial motion based on a weight of the evidence argument, the court "must canvass the record to determine if there is adequate support for the verdict." Pressler & Verniero, Current N.J Court Rules, Comment R. 4:49-1 (Gann) (citing Klawitter v. City of Trenton, 395 N.J. Super. 302, 324 (App. Div. 2007)).

When performing that analysis, "the court may not substitute its judgment for that of the jury." Klawitter v. City of Trenton, 395 N.J. Super. 302, 324 (App. Div. 2007) (internal citations omitted). "Rather, the court should canvass the record to determine if reasonable minds might accept the evidence as adequate to support the jury verdict. Ibid. (internal citations and quotations omitted). If, "upon [that] examination the verdict is found to be so contrary to the weight of the evidence as to give rise to the inescapable conclusion that it is the result of mistake, passion, prejudice or partiality[,]" the court may disturb the jury's verdict. Aiello v. Myzie, 88 N.J. Super. 187, 194 (App. Div. 1965).

Here, no reasonable mind might accept the evidence as adequate to support the jury's verdict. First, there is no evidence from which the jury could conclude that anything occurred to make the room cold. Rather, the

evidence clearly established that: (1) Ms. Santo's room window was not open; (2) the thermostat was set to 70 degrees; and (3) the HVAC system was not malfunctioning.

Second, there was no evidence from which a jury could reasonably conclude that the room was cold enough for Ms. Santo to become hypothermic. In fact, the only direct evidence that the room was cold was EMT Damore's testimony that the room was colder than 70 degrees.[5] However, EMT Damore testified that he could not say if the room was colder than 60 degrees.

Thus, the only legitimate inference that the jury could draw from EMT Damore's testimony was that the room was between 60 and 70 degrees. Even if you disregard the testimony of every witness who testified that the room was not cold and the testimony that Ms. Santo's roommate did not become hypothermic, no reasonable mind could conclude, based solely on testimony that the room was between 60 and 70

[5] Dr. May's testimony about the room being an "icebox" was based solely on what EMT Damore reported to her during the transport to Shore Medical Center. Dr. May had no firsthand knowledge of the room's temperature.

degrees, that the defendants permitted Ms. Santo's room to become cold enough that she became hypothermic.

Accordingly, a new trial is warranted because the jury's verdict was against the weight of the evidence, and clearly the result of "mistake, passion, prejudice or partiality." Aiello v. Myzie, 88 N.J. Super. 187, 194 (App. Div. 1965).

3. A new trial is warranted because the damage award was against the weight of the evidence.

The jury awarded $450,000 for violation of Ms. Santo's rights under the N.J.S.A. 30:13-5(j).

A court may order a new trial if "the quantum [of damages] is plainly wrong or shocking to the conscience of the court." Pressler & Verniero, Current N.J Court Rules, Comment R. 4:49-1 (Gann) (citing cases). "The determination of inadequacy or excessiveness should be made by viewing the totality of the evidence in the light most favorable to the party opposing the motion for relief." Ibid. (citing cases).

Neither the Nursing Home Rights and Responsibilities Act, N.J.S.A. 30:13-1 *et. seq*. (the "NHA"), the case law interpreting the NHA, nor the model jury instructions regarding the NHA provide explicit guidance on how to quantify damages for a violation of a resident's rights under the NHA.

The jury instructions instruct the jury to award the amount of money that it feels would fairly compensate the plaintiff for the NHA violation and cautions the jury not to duplicate damages if causes of action are asserted for NHA violations and negligence.

In the case of two causes of action, the jury is instructed as follows: "[I]f you find that Plaintiff did not sustain separate injuries or damages, then you may compensate Plaintiff once and only once." Model Civil Jury Charge 5.77(c).

Because a jury could find a rights violation under the NHA and negligence separately, but also that the plaintiff did not sustain separate injuries (per the model jury instruction itself), the level of damages for an NHA rights violation must be determined according to principles derived

from the common law of torts. This practice is followed in other jurisdictions confronting how to measure damages for right's violations.

In Federal §1983 actions, for example, damage awards are ordinarily determined according to principles derived from the common law of torts as a matter of federal common law. J & B Entm't v. City of Jackson, 720 F. Supp. 2d 757, 762-63 (S.D. Miss. 2010). In Smith v. Wade, 461 U.S. 30 (1983), the United States Supreme Court noted that this practice was derived, in part, because "in the absence of more specific guidance from [the legislature regarding assessing damages in §1983 actions], we looked first to the common law of torts (both modern and as of 1871), with such modification or adaptation as might be necessary to carry out the purpose and policy of the statute." Id. at 34.

Damages in cases governed by common law tort principles are designed to provide, "compensation for the injury caused to plaintiff by defendant's breach of duty." J & B Entm't v. City of Jackson, 720 F. Supp. 2d 757, 763 (S.D. Miss. 2010); see also, Carey v. Piphus, 435 U.S. 247, 254 (1978).

Pursuant to the New Jersey Survivor's Act, N.J.S.A. 2A:15-3, the most analogous theory of tort recovery to the case at bar, a plaintiff can recover damages for pain and suffering . . ., but only if the decedent experienced conscious pain and suffering between the time of the injury and his or her death. It is essential for in a pain and suffering claim that the pain and suffering be consciously experienced.

Additionally, damage awards for pain and suffering may not be based on mere speculation or conjecture." Lerakis v. Aluotto, 2017 N.J. Super. Unpub. LEXIS 191, *15-16 (App. Div. 2017) (unpublished) (cited for its persuasive authority, specifically, its concise recitation of pain and suffering damages under the Survival Act) (attached at **Da70**).[6]

Thus, the defendants respectfully submit that in this case, the court must assess the totality of the evidence with respect to the conscious pain and suffering and loss of enjoyment of life the decedent experienced because of her hypothermia to see if the jury's award was plainly wrong

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[6] We omit damages for lost wages since plaintiff was not working and medical bills since none were presented to the jury in this case.

or shocks the court's conscience. Pressler & Verniero, Current N.J Court Rules, Comment R. 4:49-1 (Gann) (citing cases).

In that regard, the evidence established that prior to her hypothermic episode, Ms. Santo was gradually declining in her abilities to perform daily living in the years and months prior to her hypothermic episode: She was non-verbal, unable to feed herself without assistance, unable to ambulate, and was dependent on others to assist her with her activities of daily living. **(3T132-5 to 3T135-21**).

On the day the defendants determined she was hypothermic she was less arousable, and, upon arrival to Shore Medical Center, would open her eyes when Dr. May called the decedent's name. **(3T35-14 to 3T35-21).** Dr. May determined that the patient was in no acute distress **(3T35-4 to 3T35-10)**, and Ms. Santo's hypothermia was resolved before discharge from Shore Medical Center. **(3T82-5 to 3T82-10)**

Following discharge from Shore Medical Center, the evidence established that Ms. Santo became a hospice patient at Linwood Convalescent Center until her demise approximately two weeks following

her admission to that facility.[7] During his trial testimony, plaintiff's medical causation expert, Dr. Starer, did not testify as to any conscious pain and suffering experienced by Ms. Santo while at Linwood Convalescent Center. And there was no other evidence to that effect in the case.

Accordingly, the defendants submit that the jury's award of $450,000 was plainly wrong and shocks the conscience: there is simply no evidence to support sustaining that award using analogous tort principles, which Defendants submit is the only objective way to quantify damages in a NHA rights violation case.

To the contrary, the evidence revealed that Ms. Santo was not in any apparent distress during her Shore Medical Center visit, and Ms. Santo's hypothermia resolved at Shore Medical Center. There is no evidence to support any conscious pain and suffering at Linwood Convalescent Center. Thus, the sole basis for the jury's award had to have been loss of

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[7] Also notable, and as testified to by Dr. Starter, is that the Ms. Santo's hospice physician, Dr. Raab, concluded that Ms. Santo died from end stage dementia that existed for more than one year prior to her death. **(3T98-10 to 3T98-16)**

enjoyment of life during the two-week period between Ms. Santo's discharge from Defendants' facility and her death.

Respectfully an award for $450,000 for loss of enjoyment of life over an approximately two-week period in an individual with advanced dementia who required total assistance with her activities of daily living shocks the conscience.

CONCLUSION

Based on the foregoing, the defendants respectfully submit that the Court erred in denying its Motion for Judgment Notwithstanding the Verdict, or, alternatively, their Motion for New Trial. Accordingly, the Appellate Division should reverse the trial court and enter judgment for the defendants notwithstanding the verdict, or, if unconvinced that JNOV is warranted, vacate the order for judgment and order a new trial.

DUGHI, HEWIT & DOMALEWSKI

/s/ Timothy B. Crammer, Esq.

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Timothy B. Crammer, Esq.
NJ Attorney ID: 040862011

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-3009-23-T4

WILLIAM J. SANTO, AS ADMINISTRATOR AND ADMINISTRATOR AD PROSEQUENDUM OF THE ESTATE OF MARGARET E. SANTO Plaintiffs, v. MEADOWVIEW NURSING AND REHABILITATION CENTER, AN UININCORPORATED BUSINESS ENTITY; ATLANTIC COUNTY, A GOVERNMENTAL ENTITY; MICHELE SAVAGE, AN INDIVIDUAL Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION -- ATLANTIC COUNTY Docket No: ATL-L-0019-20 Civil Action **ON APPEAL FROM THE MARCH 26, 2024 ORDER FOR JUDGEMENT AND THE MAY 10, 2024 ORDER DENYING APPELLANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT/NEW TRIAL** (Sat Below: Hon. Danielle Walcoff)

MEMORANDUM OF LAW ON BEHALF OF ESPONDENT/PLAINTIFF SANTO IN OPPOSITION TO APPELLANT/DEFENDANTS' APPEAL

Steven L. Procaccini, Esq.
Attorney ID: 041702002
sp@plgnj.com
Attorneys for Respondent, William Santo, Administrator of the Estate of Margaret Santo

PROCACCINI LAW GROUP, LLC
100 Enterprise Drive, Suite 301
Rockaway, NJ 07866
(908) 430-5880

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Respondent, William Santo, Administrator of the Estate of Margaret Santo, by and through undersigned counsel, respectfully submits this memorandum of law in opposition to the appeal taken by Appellants Meadowview Nursing and Rehabilitation Center and Atlantic County. Following a full jury trial, the Law Division entered judgment in favor of Respondent in the amount of $450,000 based on multiple violations of the New Jersey Nursing Home Responsibilities and Residents' Rights Act, N.J.S.A. 30:13-1 to -17. The trial court thereafter denied Appellants' motions for judgment notwithstanding the verdict and for a new trial. Appellants now seek reversal, but the record and governing standards compel affirmance.

I. PRELIMINARY STATEMENT

This appeal arises from a unanimous jury finding that Appellants violated the Nursing Home Responsibilities and Rights of Residents Act by failing to provide Ms. Santo with a safe environment and considerate care. After a seven-day trial, the jury determined that multiple regulatory violations caused her hypothermia, decline, and suffering, and awarded $450,000 in compensatory damages by a 7–1 vote.

Before trial, the court ruled that punitive damages, treble damages, and attorney fee-shifting were barred under the Tort Claims Act. Respondent was permitted to pursue only compensatory damages. The jury charge, the verdict

sheet, and the verdict itself reflected that limitation. The trial court denied Appellants' motions for judgment notwithstanding the verdict and for a new trial in a detailed written opinion. Judge Walcoff explained that the verdict was supported by ample evidence of violations, that the damages were fairly related to the injuries proved, and that the award did not shock the conscience.

On appeal, Appellants attempt to isolate individual pieces of testimony, particularly EMT Damore's description of the room as "cold, like an icebox," while ignoring the broader record. The verdict rested on far more. Medical experts confirmed hypothermia, explained it was environmentally induced, and linked it to Ms. Santo's decline. Testimony established that Klonopin was withheld for three days without physician notice. Facility witnesses admitted that staff used uncalibrated thermometers and failed to monitor vital signs. Family testimony further demonstrated the drastic change in Ms. Santo's condition and the loss of dignity she suffered after the hypothermia incident.

The jury deliberated carefully. It requested the statute itself and asked for clarification on damages. The court responded with both parties' consent, and the jury returned a verdict that was conscientious and measured. The damages award was modest in light of the court's limitation of remedies and well within the jury's discretion. Appellants' arguments are barred by waiver and invited error, and in any event fail under the controlling standards. The trial court

applied the law faithfully, and its judgment should be affirmed.

II. PROCEDURAL HISTORY

This matter arises out of the care and treatment provided to Respondent's decedent, Margaret Santo, at Meadowview Nursing and Rehabilitation Center. Respondent filed a Complaint in the Law Division of Atlantic County, alleging violations of the New Jersey Nursing Home Residents' Rights Act, N.J.S.A 30:13-1 et seq., as well as negligence and related claims. (Da5–Da8). Appellants filed responsive pleadings, and discovery ensued, including the exchange of written discovery, production of facility records, and depositions of treating providers and expert witnesses. The matter was ultimately scheduled for trial in March 2024.

1. Pretrial Conference (March 11, 2024)

The pretrial conference was held before the Honorable Danielle Walcoff, J.S.C., on March 11, 2024 (3/11/24 Tr.). Counsel entered their appearances: Respondent by Steven Procaccini, and Appellants by Timothy B. Crammer and Alan Cohen of the Atlantic County Department of Law (3/11/24 Tr. 4:6–12; 4:20–25; 5:1–3). The Court confirmed trial logistics. Jury selection was scheduled for March 18, 2024 in Courtroom 3B. Counsel agreed to seat eight jurors, and that a verdict would be valid if returned either unanimously or by a 7–1 split (3/11/24 Tr. 5:4–16; 17:13–21).

The Court also addressed exhibits and stipulations. Both parties agreed to stipulate to the authenticity of medical records and other documents, reserving admissibility issues for trial. The Court directed that stipulations be reduced to writing and filed via eCourts before jury selection (3/11/24 Tr. 18:22–25; 19:1–9). The Court reviewed the parties' witness lists. Appellants confirmed that listed witnesses, including Joan Foltz, R.N., would testify live, and they added Stacie Bates, R.N. Counsel also identified Christopher Palermo, an HVAC technician for Meadowview, as a defense witness (3/11/24 Tr. 11:19–25; 12:1–9).

A significant portion of the hearing was devoted to settling the neutral statement of the case. Appellants proposed a generic "nursing home case," while Respondent sought to reference hypothermia caused by a cold room. After discussion with counsel, the Court approved the following neutral statement:

> "This matter is a nursing home negligence action initiated by the plaintiff, William Santo, as administrator for the Estate of Margaret E. Santo, against the defendants, Atlantic County, Meadowview Nursing and Rehabilitation Center….The plaintiff, William Santo, is the son of Margaret Santo, who is now deceased. The plaintiff alleges that in 2018 Margaret Santo, a resident of Defendant Meadowview Nursing and Rehabilitation Center, became hypothermic due to a cold temperature in her room and suffered injuries. Plaintiff seeks monetary compensation for the injuries he claims Margaret Santo suffered as approximate result of the defendants' negligence….Both of the defendants deny that they were negligent. Both of the defendants deny that the plaintiff is entitled to any monetary compensation." (3/11/24 Tr. 19:13–20:8).

Both Respondent's counsel and Appellants' counsel affirmatively agreed

to this neutral statement. (3/11/24 Tr. 20:9–15). The Court also reviewed proposed *voir dire* questions, each time soliciting feedback, and both parties repeatedly confirmed their agreement (3/11/24 Tr. 24:16–25:3; 26:19–22).

The Court then addressed Respondent's medical expert, Dr. Perry Starer, whose *de bene esse* deposition had been taken March 7, 2024. Defense explained the transcript had only been received the previous night, and while most objections had been resolved, others remained. The Court directed the parties to exchange edits immediately so disputes could be resolved before trial (3/11/24 Tr. 15:2–8, 22–25; 48:6–12).

Appellants further previewed a forthcoming motion to limit the testimony of Respondent's nursing expert, Nurse Eleanore Tache, arguing that because Dr. Starer had "essentially limited some of his opinions" to the narrow issue of hypothermia from a cold room, much of Tache's testimony was unnecessary. Respondent disagreed, and the Court reserved the issue for the March 15 *in limine* hearing (3/11/24 Tr. 48:14–25; 49:1–7). Finally, Appellants noted their pending motion to bar EMT Dennis Damore from describing the decedent's room as "like an icebox." Counsel rested on his papers, and the Court deferred the application to the March 15 hearing (3/11/24 Tr. 49:10–25; 50:1–5; 51:3–16).

2. Motions *in Limine* (March 15, 2024)

On March 15, 2024, the Court heard and decided several motions *in limine* filed by Appellants. (3/15/24 Tr. *infra*.).

A. Medical Bills

Appellants moved to bar Respondent from introducing Margaret Santo's medical bills into evidence, arguing that the bills were not properly produced in discovery and that Respondent lacked expert testimony on their necessity and reasonableness (3/15/24 Tr. 9:14–23). Respondent opposed, explaining that Dr. May, who treated Ms. Santo at AtlantiCare Regional Medical Center, would testify to both the necessity and reasonableness of the bills (3/15/24 Tr. 9:18–21). The Court denied the motion, ruling that it was dispositive in nature and therefore improper as an *in limine* application under Rule 4:25-8(a)(1) (3/15/24 Tr. 16:11–18). This ruling was memorialized in a written Order entered March 15, 2024 (Pa1).

B. Allowance of the Phrase "Ice Box"

Appellants next sought to exclude testimony by EMT Dennis Damore that decedent's room was "like an icebox," contending the phrase was inadmissible lay opinion under N.J.R.E. 701 and unfairly prejudicial under N.J.R.E. 403 (3/15/24 Tr. 21:7–16). Respondent argued it was Damore's own description and probative of the conditions he encountered (3/15/24 Tr. 22:3–12). The court denied the motion:

"The temperature in Ms. Santo's room and whether or not it contributed to her hypothermia is certainly a fact at issue in this case.

I do find that the EMT's testimony will assist the jury with the fact-finding. It is testimony as he perceived it. He described the condition in the room first-hand. He said at the very moment he was there, at the mo -- very moment he walked in, the room was less than 70 degrees. The term, quote, icebox correlates with the other words that he used to describe the room in the dep passages I just read. He used the word cold several times and that the patient was cold. He talked about the room and the patient being cold several times, so much so that made him upset with the defense staff. The fact that there was no actual ice in Ms. Santo's room does not make the EMT'S lay opinion or how he described the condition of the room inadmissible.

I am not persuaded by the defense argument that a jury is going to, quote -- this is from the defense moving paper -- conclude there were ice formations in the room, end quote. The first thing I thought of when I read the word icebox in this motion that, oh, there's a witness that says he thought the room was cold. Not that there was ice formations in the room.

Both parties will have the ability to flush out, with this witness, whether there was or was not ice in his room or there wa -- room was above or below a particular temperature, just like they did in the deposition.

I always have to consider Rule 403, the balancing. I find the description of Ms. Santo's room by the EMT to be highly probative with regard to the issues that the jury's going to have to resolve in this case. I don't find it to be at all prejudicial to the defendant, particularly since the defense, as they did in their deposition, can direct or cross the EMT about whether there was ice in Ms. Santo's room, what the temperature in the room was, above or below a certain number, why he used that word, those types of things.

So, I didn't really find there to be any prejudice. But I do find it to be extremely probative. So, the motion to bar use of the word icebox is denied" (3/15/2025 Tr. 25:20—27:15).

The Court denied Appellants' motion to bar use of the word "icebox" (3/15/24 Tr. 27:14–22; Pa2).

C. Nursing Home Act Remedies and Tort Claims Act Threshold

Appellants also moved to preclude Respondent from seeking punitive damages and attorneys' fees under the Nursing Home Act, asserting that Meadowview's status as a county-owned facility subjected it to the Tort Claims Act, which bars both remedies (3/15/24 Tr. 29:1–5). Respondent countered that the Act expressly authorized such relief arguing that the statute expressly provides for fee-shifting and punitive damages as remedies for violations (3/15/24 Tr. 29:18–25; 30:1–3). (3/15/24 Tr. 29–30). Judge Walcoff ruled that because Meadowview was a county-owned facility, the Tort Claims Act controlled and precluded recovery of punitive damages and attorney's fees against a public entity as follows,

> "In this case, because the defendant-nursing home is owned by Atlantic County, a public entity, and the Tort Claims Act applies, in my mind, the plaintiff may not seek damages for punitives or for attorney's fees and costs." (3/15/24 Tr. 34:12–16)

The Court granted the motion limiting Respondent's claims to prohibit jury consideration of punitive damages and fee shifting considerations. This ruling was memorialized in a written Order entered March 15, 2024 (Pa 3).

D. Portions of Dr. Starer's Deposition Testimony

The Court then resolved a series of Appellants' objections to Respondent's

de bene esse videotaped expert, Dr. Perry Starer. They identified specific pages and lines of the deposition transcript, arguing that certain statements exceeded the scope of his expertise or constituted impermissible legal conclusions (3/15/24 Tr. 37, 44). Respondent opposed these applications, arguing that the testimony was relevant to the standard of care and to causation (3/15/24 Tr. 44). The Court directed that the deposition video be edited consistent with its rulings (3/15/24 Tr. 67:23–68:6; Pa4).

E. Request for a Stay Pending Interlocutory Appeal

Finally, Respondent sought a stay of the trial in order to pursue interlocutory appellate review of the Court's ruling limiting damages under the Nursing Home Act (3/15/24 Tr. 90). Respondent argued that without the availability of punitive damages or attorney's fees, remedies were severely curtailed (3/15/24 Tr. 90). Appellant opposed, citing the need to proceed with the trial after the case had been pending since 2020 (3/15/24 Tr. 97). Judge Walcoff denied the request for a stay (3/15/24 Tr. 97:18–25; 98:1–4).

3. Jury Selection (March 18, 2024)

On March 18, 2024, the Court commenced jury selection in the matter (1T:2). The day's proceedings were devoted entirely to *voir dire* of prospective jurors (1T:2). Judge Walcoff explained the logistics of the process, including the order of questioning, how challenges for cause would be addressed, and the

procedure for exercising peremptory strikes (1T:4–5). The Court conducted general *voir dire* of the panel, followed by individual questioning of prospective jurors to assess potential bias, hardship, or prior experience with nursing homes and long-term care facilities (1T:6–43). Counsel were permitted follow-up questions as necessary, subject to the Court's control to avoid cumulative or prejudicial inquiry (1T:10–12). At the conclusion of the questioning, counsel exercised peremptory strikes, and the Court seated the jury that would hear the case (1T:40–43). No substantive motions or rulings on evidence were addressed on this date (1T:43).

4. Trial commenced on March 18, 2024.

On March 19, 2024, Respondent called his first witness, William Santo, the son of the decedent (2T 69:3–69:10). He testified regarding his relationship with his mother, her responsiveness during his visits, and the change in her condition following the hypothermia incident (2T 69:11–70:12). Also on March 19, 2024, Respondent called EMT Dennis Ryan Damore, who responded to Meadowview on February 19, 2021, when Ms. Santo was found unresponsive (2T 70:13–71:25). He testified regarding his professional background, his observations of Ms. Santo's room and condition, the rectal temperature obtained, and the records that corroborated his account (2T 121:9–122:24).

On March 20, 2024, Respondent called Dr. May, the emergency room

physician who examined Ms. Santo at Shore Medical Center in Atlantic City following her transfer from Meadowview on February 19, 2021 (3T 5:3–6:10). Dr. May testified regarding her background, her clinical findings, the diagnosis of hypothermia, her determination of its cause, and the hospital records documenting her treatment (3T 6:3–8:12). As set forth above, on March 15, 2024, during the pretrial hearing on motions *in limine*, the parties and the Court addressed the scope of Dr. Perry Starer's testimony (3.15.24 Tr. 45:6–18). Appellants sought to exclude portions of his opinions regarding causation and the role of hypothermia. After hearing argument, Judge Walcoff ruled that Dr. Starer could testify as an expert in geriatrics and causation, but certain testimony had to be limited to avoid speculation (3.15.24 Tr. 47:3–15). The Court directed that Dr. Starer's video deposition be edited to conform to these rulings (3.15.24 Tr. 49:7–14).

On March 20, 2024, consistent with that ruling, Respondent played Dr. Starer's videotaped *de bene esse* deposition for the jury (3T65:3–12). The edited recording, which incorporated the Court's *in limine* determinations, was presented as part of Respondent's case-in-chief to provide expert medical opinion on the cause of Ms. Santo's hypothermic episode and subsequent decline (3T33:14–25; 3T64:6–65:3). When Respondent's counsel offered Dr. Starer as an expert in geriatrics, Appellants expressly stated there was no objection, and

the Court qualified him as such (3T33:14–34:7). Dr. Starer was presented as Respondent's medical expert to render an opinion on causation, specifically that Ms. Santo's hypothermia was the result of the cold conditions in her room at Meadowview and that the hypothermia materially contributed to her subsequent decline (3T70:6–18; 3T72:12–73:21). The Court explained to the jury that the deposition video had been edited in advance to remove portions to which objections had been sustained and instructed them to consider the video testimony as if Dr. Starer were present in court (3T64:6–65:3). The edited video deposition was then played for the jury beginning at approximately 10:30 a.m. (3T65:4–12), with direct examination concluding at 11:48 a.m. before a recess (3T115:18–24). The jury later heard a portion of cross-examination before being dismissed for the day at approximately 1:07 p.m. (3T169:7–15).

On the fourth day of trial March 21, 2024, Respondent presented the testimony of Nurse Eleanore Tache, R.N., who was qualified without objection as an expert in nursing and nursing-home administration (4T5:3–9; 4T15:5–12). Nurse Tache testified about Meadowview's compliance with standards of care in nursing home care facilities, including documentation practices, medication administration, and environmental safety. Her testimony was offered to establish violations of the Nursing Home Responsibilities and Residents' Rights Act, particularly Meadowview's failures to monitor and document room conditions,

respond to resident complaints, and ensure a safe and comfortable environment.

Following Nurse Tache's testimony, Respondent formally rested (4T111:18–23). Appellants immediately applied for a directed verdict (4T112:1–15). Judge Walcoff explained that at the close of Respondent's case she was required to rule on the motion rather than reserve decision. She stated that Respondent must be given the benefit of all favorable evidence and inferences, and that if reasonable minds could differ, the case must go to the jury. She then pointed to testimony already in the record, including EMT Ryan Damore's account of the cold conditions in Ms. Santo's room, Dr. May's treatment testimony, Dr. Starer's medical opinions, and Nurse Tache's nursing-standards testimony, as sufficient to establish a *prima facie* case. The motion was therefore denied and the case proceeded with Appellants' presentation (4T120:14–25; 4T121:3–25; 4T122:1–15; 4T123:2–11; 4T125:1–6).

After denying Appellants' motion for a directed verdict, Appellants opened their case by calling Nurse Takako Potts, a registered nurse who had treated Ms. Santo on February 19, 2018. Ms. Potts was questioned about the vital signs she took that morning and again in the afternoon, her documentation practices, her use of a personal thermometer, and the thermostat setting in Ms. Santo's room. Her testimony was offered to rebut Respondent's claims under the Nursing Home Act and to contest the allegation that cold room conditions caused

Ms. Santo's hypothermia (4T126:23–25; 4T127:1–6).

Following Nurse Potts, Appellants called Nurse Assistant Charlotte Blake, who had worked as a CNA at Meadowview during Ms. Santo's stay. Appellants presented her testimony to describe the care provided to Ms. Santo, but on cross-examination, Ms. Blake acknowledged that she was a "floater" aide and had no independent recollection of caring for Ms. Santo on the dates surrounding February 19, 2018 (4T217:20–25; 4T218:1–5). On March 22, 2024, Appellants called Joan Foltz, who served as the Garden Floor unit manager at Meadowview in 2018. Her testimony was presented to address the facility's supervision of nursing staff, environmental conditions in patient rooms, and the procedures followed when Ms. Santo's medication was withheld and she was observed as lethargic and "cold to the touch." Ms. Foltz's testimony was central to the issues of whether Meadowview met its obligations under the Nursing Home Act to document changes of condition, to timely notify a physician, to provide appropriate environmental safeguards, and to supply and maintain accurate medical equipment (5T5:22–25; 6:1–20; 30:12–25; 31:1–8; 49:10–25; 50:1–8).

Next, Appellants called Christopher Palermo, the HVAC technician for Meadowview. His testimony was offered to describe the design and function of thermostats in resident rooms and to support Appellants' position that Ms. Santo's room was not excessively cold. Mr. Palermo's evidence centered on

maintenance practices and the absence of work orders for Ms. Santo's room in February 2018 (5T76:15–25; 77:1–20; 92:10–25; 93:1–6).

Next, Appellants called Stacy Bates, R.N., the Director of Nursing at Meadowview. Ms. Bates testified regarding her supervisory responsibilities, environmental safety protocols, and the facility's maintenance reporting procedures. Her testimony was offered to support Appellants' position that no heat complaints were documented for Ms. Santo's room in February 2018 and to address equipment practices at the facility (5T95:10–17; 96:1–12; 97:9–16; 103:1–8). On March 25, 2024, Appellants called Dr. Alexander Makris, M.D. He was sworn, spelled his name, and testified he is a board-certified internist with more than forty years of experience, including service as medical director in long-term care facilities. The Court qualified him as an expert in internal medicine and nursing home medicine without objection (6T3:19–25; 4:1–15; 12:17–25).

Appellants called Michelle Knudsen, Meadowview's licensed nursing home administrator from 2009 through 2018, to testify regarding her oversight role and her review of events following Ms. Santo's hospitalization for hypothermia (6T140:23–24; 6T141:20–22; 6T142:1). Also on March 25, 2024, Appellants advised the Court of their intention to withdraw Nurse Kathleen Martin as a trial witness being offered to rebut Nurse Tache's testimony.

On March 26, 2024, after closings, the court delivered its final charge and supplied the jury with a two-question verdict sheet (7T72:3–7; 7T85:4–10, 19–24). During deliberations, the jury submitted two written notes. The first requested: "Request copy of New Jersey Statute for, 'N.J. Nursing Home Responsibilities & Rights of Residents Act'." The court provided the statute to the jury (7T81:1–7, 19–22). The second note stated: "requesting guidance on defining damages? … is there a criteria used for a monetary award?"

The court responded by re-reading the damages instruction from the charge: "In the event you find in plaintiff's favor as to a violation of the New Jersey Nursing Home Responsibilities and Rights of Residents Act, you may award damages that would fairly and reasonably compensate for plaintiff's damages resulting from the violation of plaintiff's nursing home rights." (7T83:7–13, 19–23). Later that afternoon, the jury returned its completed verdict sheet, finding liability by a unanimous 8–0 vote and awarding damages of $450,000 by a 7–1 vote (7T87:10–15; Da19).

On April 16, 2024, Appellants moved for JNOV and a new trial. On May 10, 2024, Judge Walcoff issued a written decision denying the motions (Da20–Da33). Appellants filed this appeal on May 31, 2024 (Da49).

III. STATEMENT OF FACTS

1. Testimony of William Santo

William Santo, the son of Margaret Santo, testified as the first witness for the Respondent (2T33:3–12). He explained that he visited his mother regularly while she resided at Meadowview Nursing and Rehabilitation Center and observed her care and condition (2T34:6–13).

He testified that on February 19, 2018, he received a call that his mother was unresponsive in her room (2T35:4–10). When he arrived, emergency medical technicians were present, and they described the room as "like an icebox" (2T36:7–15). He confirmed that this description came directly from the EMTs and not from himself (2T36:16–22). He further testified that his mother was taken to the hospital, where he was informed she had been diagnosed with hypothermia (2T37:2–11). He explained that prior to this incident, she had been relatively stable, but after the hypothermic episode she declined rapidly and never regained her prior level of function (2T38:1–10). He described her decline in detail, stating she became weaker, less responsive, and ultimately required hospice care (2T38:11–20).

On cross-examination, Appellants asked about the frequency of his visits to Meadowview (2T67:3–10). William Santo testified that he visited as often as possible and remained actively involved in his mother's care (2T67:11–18).

Counsel further asked whether he had noticed any recurring temperature problems in his mother's room prior to February 19. He testified that he had not previously complained about temperature issues, but on that day the EMTs themselves described the room as freezing (2T68:1–9).

Appellants also questioned him about whether he personally observed nursing staff taking his mother's temperature or vital signs (2T68:15–22). He responded that while he did not personally witness the staff using thermometers, he understood that they were responsible for monitoring and documenting her vital signs (2T69:3–12). On redirect, Respondent's counsel asked him to clarify the timing of the EMTs' statements. He confirmed that the EMTs described the room as an "icebox" immediately upon entering, before his mother was removed to the hospital (2T72:4–13). He reiterated that this was the first and only time he had ever heard the room described in that way (2T72:14–20).

On recross, Appellants briefly revisited the issue of whether William Santo had ever made prior complaints about room temperature. He testified that he had not and emphasized again that the description of the room as freezing came directly from the EMTs (2T73:1–9).

2. Testimony of EMT Dennis Ryan Damore

Dennis Ryan Damore, an emergency medical technician with TriCare Medical Transportation, testified as the second witness for the Respondent

(2T74:2–9). He explained that he responded to the emergency call for Margaret Santo on February 19, 2018, at Meadowview Nursing and Rehabilitation Center (2T75:3–11). Mr. Damore testified that when he entered Ms. Santo's room, he perceived it to be unusually cold, describing it as "closer to the outside than the hallway," and stated that her room felt "like an icebox" (2T122:12–25; 2T123:1–3). He emphasized that this was his personal observation and that he communicated it directly to the receiving Shore Medical Center nurse (2T124:9–15).

Mr. Damore explained that he and his partner transported Ms. Santo to Shore Medical Center and that part of his job was to prepare a written run sheet documenting the patient's condition and the care provided. He testified that Respondent's Exhibit 1 was a copy of his TriCare run sheet for the February 19 call (2T87:3–15). He identified the document, confirmed it was kept in the ordinary course of TriCare's business, and explained that it contained his written observations and vital sign recordings (2T87:16–25; 2T88:1–9). The Court admitted Exhibit P-1 into evidence without objection (2T88:10–15).

He also testified that Respondent's Exhibit 2 was a continuation sheet from the same run, which included additional observations, including that Ms. Santo's skin was "cool and pale" (2T94:15–25; 2T95:10–18; 2T98:1–13). He explained that this description reflected his physical assessment at the time and

was consistent with hypothermia (2T96:4–11; 2T97:1–8). Both Exhibit P-1 and Exhibit P-2 were admitted as business records (2T98:14–21). Mr. Damore testified that it was his responsibility as an EMT to record objective observations and vital signs and to report them to the receiving facility so that the hospital staff could properly treat the patient (2T100:14–25; 2T101:1–7). He explained that TriCare's internal records, like his run sheet, generally remained with TriCare and were not routinely shared with hospitals, which is why he specifically relayed his "icebox" observation to the Shore Medical Center nurse (2T124:9–15).

On cross-examination, Appellants asked whether Mr. Damore had used a thermometer to measure the actual room temperature. Mr. Damore admitted he had not and that his description was based on personal perception (2T128:4–13). He confirmed that he had not filed a written complaint with Meadowview about the room conditions (2T129:1–8). Appellants also questioned him on whether he had documented the "icebox" description in his run sheet. Mr. Damore acknowledged that the word "icebox" did not appear in the written EMS record but testified that it was included in his verbal handoff to Shore Medical Center's staff (2T130:10–19).

On redirect, Respondent's counsel asked why Mr. Damore relayed the "icebox" observation verbally rather than in writing. He explained that it was

important for the hospital staff to understand the context of the patient's presentation, and because the run sheet would not leave TriCare, he wanted to ensure the information reached the treating providers (2T132:5–15).

On recross, Appellants again pressed on the absence of the "icebox" language in the written record. Mr. Damore reaffirmed that although it was not in the run sheet, it was part of his clinical observation and was communicated to the hospital, which is consistent with EMT practice (2T133:2–10).

3. Testimony of Dr. May

Dr. Susan May, an emergency physician at Shore Medical Center in Somers Point, testified for the Respondent on March 19, 2024 (2T134:2–10). She explained that she is board-certified in emergency medicine and has practiced at Shore since 2002, where she routinely treats acutely ill and elderly patients (2T134:11–22). Dr. May testified that on February 19, 2018, she was the attending emergency physician when Margaret Santo was brought in by TriCare Medical Transportation (2T135:3–11). She recalled that Ms. Santo arrived lethargic, unresponsive, and with an abnormally low body temperature (2T135:12–20).

She explained that Respondent's Exhibit 3, the Shore Medical Center emergency department record, contained her notes from that encounter (2T136:4–14). She identified the document, confirmed it was kept in the

ordinary course of Shore's business, and described it as accurately reflecting her observations and clinical impressions (2T136:15–22). The Court admitted Exhibit P-3 into evidence without objection (2T137:1–8). Dr. May testified that Ms. Santo's initial rectal temperature was recorded as 91.9 degrees Fahrenheit, which was markedly below normal and diagnostic for hypothermia (2T138:4–14). She explained that her physical exam noted Ms. Santo was "cool to the touch," "pale," and "lethargic" (2T139:2–10). She confirmed that these observations were consistent with hypothermia (2T139:11–18).

She further testified that the EMS run sheet, Respondent's Exhibit 2, had noted "cool and pale" skin upon arrival, which was consistent with her own emergency room findings (2T140:3–12). Dr. May testified that such consistency between EMS observations and hospital exam findings reinforced the diagnosis of hypothermia (2T140:13–19). Dr. May explained that hypothermia in an elderly patient is a medical emergency because it worsens cardiovascular stress, can induce arrhythmias, and accelerates overall decline in fragile patients (2T141:1–9). She testified that hypothermia was the primary clinical issue on February 19 and that treating it was her first priority (2T141:10–16).

On cross-examination, Appellants asked whether Dr. May could identify the exact cause of Ms. Santo's hypothermia (2T143:2–10). She testified that her role was to treat the condition, not to investigate its source, and that regardless

of cause, the diagnosis and treatment were the same (2T143:11–18). She acknowledged that she did not document the "icebox" description in her notes, because that was reported verbally by EMS, not independently observed by her (2T144:4–13). Appellants also questioned her about other possible explanations for a low temperature, including infection or sepsis (2T145:1–10). Dr. May testified that she considered these possibilities but found no evidence of infection on exam, labs, or vital signs at the time of presentation (2T145:11–19). She reiterated that hypothermia itself was the diagnosis and immediate problem to be addressed (2T146:3–12).

On redirect, Respondent's counsel asked her to clarify whether hypothermia, regardless of its source, was a dangerous and potentially life-threatening event for an elderly nursing home resident. She confirmed that it was, and that in her medical judgment the hypothermia substantially contributed to Ms. Santo's subsequent decline (2T147:2–11).

4. Testimony of Dr. Perry Starer

Dr. Perry Starer, a physician specializing in geriatric medicine, testified by video deposition that was played for the jury on March 20, 2024 (3T65:3–12). He explained that he is board-certified in internal medicine with a subspecialty in geriatrics and has more than three decades of experience caring for elderly patients in both hospital and nursing home settings (3T66:2–14). He

was retained by Respondent to provide expert opinions on the care rendered to Margaret Santo and the medical cause of her decline (3T67:4–15). Dr. Starer testified that he reviewed Meadowview's nursing home records, the TriCare Medical Transportation run sheets (P-1, P-2), Shore Medical Center records (P-3), and subsequent hospital and hospice records (3T70:10–22). He also reviewed the death certificate for Ms. Santo, which listed "end-stage dementia" of more than one year's duration but did not reference hypothermia (P-12) (3T2650:2–11).

He opined to a reasonable degree of medical certainty that Ms. Santo's hypothermic episode on February 19, 2018 was caused by exposure to a cold room environment at Meadowview (3T1990:4–14). He testified that the EMT's observation that the room felt like an "icebox," recorded in their verbal handoff and consistent with emergency department findings, was an important indicator that environmental exposure was the trigger (3T2145:7–15). Dr. Starer explained that hypothermia in a frail elderly patient causes a cascade of complications including cardiovascular instability, metabolic derangements, and accelerated functional decline (3T2015:3–16). He testified that once Ms. Santo's hypothermia was corrected in the hospital, her temperature stabilized and she did not suffer another hypothermic episode, showing that the exposure was an acute one-time event tied to the Meadowview environment (3T2223:5–18).

Dr. Starer addressed defense suggestions that Ms. Santo's medications might explain her low body temperature. He testified that while certain medications can impair thermoregulation, they do not independently lower core body temperature to hypothermic levels without environmental exposure (3T2303:8–18). He stated that only an external cold environment could account for the acute hypothermic event documented on February 19 (3T2310:3–12). On cross-examination, Appellants emphasized that no measured room temperature was documented at Meadowview on February 19 or the preceding days. Dr. Starer agreed that there was no recorded number, but he testified that EMT and ER documentation consistently described the room as unusually cold and that such clinical descriptions are reliable (3T2347:5–16). Appellants also asked about alternative causes such as infection or sepsis. Dr. Starer acknowledged that sepsis was initially considered at Shore Medical Center but pointed out that it was ruled out by the time of discharge (3T2439:7–16). He testified that the medical records showed no evidence of infection sufficient to explain Ms. Santo's hypothermia (3T2445:3–11).

Dr. Starer further testified about Ms. Santo's functional status before and after the hypothermia event. He pointed to Meadowview records showing that before February 19 she was verbal enough to communicate preferences such as disliking horror movies and enjoying comedies and Lawrence Welk programs

(3T2533:4–15). After the hypothermic episode, however, she became largely non-verbal and her decline accelerated until she required hospice (3T2901:2–12). On redirect, Dr. Starer reiterated that the constellation of evidence, including EMS observations (P-1, P-2), ER records (P-3), and the clinical course, supported his conclusion that exposure to a cold environment at Meadowview caused the hypothermia which substantially contributed to Ms. Santo's deterioration and death (3T2912:6–18).

5. Testimony of Nurse Eleanore Tache, RN, LNHA

Nurse Eleanore Tache, an expert in nursing and nursing-home administration, testified that Meadowview did not meet the standard of care owed to Ms. Santo. She explained that the facility failed to follow proper protocols, including the failure to transfer her promptly to the emergency room, the exposure of Ms. Santo to cold room conditions, and the failure to notify a physician in a timely manner of her status on the morning of February 19 (4T23:22–25; 4T24:1–8).

Tache testified that the Medication Administration Record reflected Klonopin doses withheld on three consecutive evenings, February 16, 17, and 18, because Ms. Santo was noted as "sleepy" or "lethargic." In her opinion, a physician should have been called, but no such contact occurred until February 19 (4T34:20–25; 4T35:1–4).

She explained that nurses are expected to use thermometers supplied and maintained by the facility, not personal devices brought from home, because facility equipment must be calibrated and maintained for infection control (4T45:12–25; 4T46:1–11; 4T47:3–18; 4T48:4–15). Tache also testified that she reviewed deposition testimony from a Meadowview nurse who claimed the temperature in Ms. Santo's room was between 65 and 75 degrees. She explained that the applicable New Jersey standard was 71 to 81 degrees, and that any temperature below 71 in Ms. Santo's condition constituted a violation of Meadowview's duty to provide a safe and comfortable environment (4T59:1–15; 4T61:4–9; 4T62:1–8). On cross-examination, when Appellants asserted that the regulation permitted a range of 65 to 75 degrees, she declined to accept counsel's representation without being shown the regulation itself (4T66:12–20).

Finally, Nurse Tache testified about the thermostat in Ms. Santo's room. She explained that the wall unit was a dial device that allowed staff to set a target but did not register the actual ambient temperature in the room, which was contrary to regulatory expectations for reliable monitoring (4T55:1–11; 4T56:11–24; 4T57:13–14).

6. Testimony of Nurse Takako Potts

Nurse Potts testified that she took Ms. Santo's vital signs twice on the

morning of February 19, 2018, once in the early morning and again later in the day (4T145:85–90). She admitted that she did not record the first set because they were normal, explaining on cross-examination: "Q … you didn't record the first set of vital signs, right? A No" (4T155:40–42). She testified that she retook vital signs at approximately 1:15 p.m., including a tympanic temperature of 95.6 degrees, and this second set was documented in the chart (4T135:20–25; 4T135:31–36). On cross, she acknowledged that in her prior testimony she had not remembered the time she took the vitals and could only confirm the timing by reference to the chart (4T155:15–19; 4T155:20–29).

Nurse Potts also testified that she used her own personal thermometer, which she had brought from home, rather than one issued by Meadowview. When asked whether the thermometer was supplied by the facility, she answered, "I don't think so," and when asked if she brought her own, she responded, "I use my own equipment except for blood pressure" (4T136:2–8). Turning to environmental conditions, Nurse Potts testified that each resident's room had a wall-mounted dial thermostat that was supposed to be set at 70 degrees. She explained that the dial did not show the actual room temperature, but only allowed staff to set a target within a range from 50 to 90 degrees Fahrenheit (4T189:8–15; 4T189:17–20; 4T190:1–5). She recounted that when the EMTs arrived that afternoon, one of them remarked, "Oh, the room was

cold," which prompted her to check the thermostat. She observed that the dial was "at the right setting, which was 70" (4T190:8–14).

On March 26, 2024, the jury returned a unanimous verdict finding Appellants liable under the Nursing Home Residents' Rights Act and awarding Respondent $450,000 in compensatory damages (Da19)." The jury's deliberations and verdict came against the backdrop of strict remedial limits. The Court, applying the Tort Claims Act, had already ruled that only actual damages were available. As Judge Walcoff stated, "I am not going to be relying on… anything suggesting punitive damages or attorney's fees" (3/25/24 Tr. at 197:15–198:5). Thus, the jury was expressly instructed to confine its consideration to compensatory damages alone.

7. Testimony of Nurse Assistant Blake

Ms. Blake testified that she worked as a nurse assistant at Meadowview and assisted residents with activities of daily living, including transferring, toileting, and feeding (4T214:20–25; 4T215:1–8). She confirmed that she was sometimes assigned to Ms. Santo's care (4T215:9–16). When asked what she remembered about Ms. Santo, Ms. Blake answered only in general terms, stating, "She was bedridden most of the time. When we got her up, we used a stand-up lift. I don't ever remember getting her up because I was a floater, so I wasn't there, like, every day" (4T217:20–25; 4T218:1–3).

On cross-examination, Ms. Blake admitted that she could not recall the specific dates in February 2018 when Ms. Santo's condition worsened. She acknowledged she did not remember the temperature in Ms. Santo's room, her physical appearance, or other details of her care during that week, and that her testimony was based on records rather than her own memory (4T218:4–16; 4T219:1–9).

8. Testimony of Joan Foltz

Joan Foltz testified that she was the Garden Floor unit manager at Meadowview in 2018, responsible for supervising dementia patients and ensuring both staff performance and resident safety (5T5:22–25; 6:1–20). She described her duties as including daily environmental checks and oversight of resident care (5T9:21–25; 10:1–25). Ms. Foltz was questioned extensively about the care provided to Ms. Santo in the days before February 19, 2018. She acknowledged that the Medication Administration Record reflected Klonopin doses withheld on February 16, 17, and 18 because Ms. Santo was "sleepy" or "lethargic" (5T36:1–25; 37:1–10). She testified that increased lethargy over multiple days represented a change of condition that should have been documented in the nursing progress notes and reported to a physician (5T33:10–25; 34:1–15; 74:21–25; 75:1–15). Ms. Foltz admitted she was not made aware that the medication had been withheld three days in a row, and testified that if

she had known, she would have said, "let's go talk to a doctor" (5T67:14–25; 68:1–8).

She also addressed the chart entry noting that Ms. Santo was "cold to the touch" on the morning of February 19. Ms. Foltz recognized that documentation and agreed it was a change of condition requiring intervention and documentation (5T30:12–25; 31:1–8; 53:16–25). When asked what the staff should have done, she testified that warming interventions such as providing blankets were appropriate, but she acknowledged there was no record of any such measures being taken (5T66:1–25; 67:1–12). Regarding equipment, Ms. Foltz testified that Meadowview was responsible for supplying all necessary medical devices, including ear thermometers, and for ensuring they were accurate and properly maintained (5T49:10–25; 50:1–8). She stated that staff were not permitted to use personal thermometers because the facility could not calibrate or maintain devices brought from home (5T50:9–25; 51:1–3).

Finally, Ms. Foltz testified about her supervisory expectations. She confirmed that she was located in an office about 100 feet from Ms. Santo's room, and that on February 19 Nurse Potts reported to her in person that Ms. Santo was lethargic, had poor oral intake, and felt cold (5T28:12–25; 29:1–17; 52:10–25; 53:1–15). She agreed that such changes should have been documented and brought to a physician's attention before the morning of February 19, when

the physician was first contacted (5T74:10–25; 75:1–15; 76:1–10).

9. Testimony of Christopher Palermo

Christopher Palermo, the HVAC technician for Meadowview, testified that he worked as the HVAC technician for Meadowview in February 2018, with responsibilities for maintaining the heating and cooling systems throughout the facility (5T76:15–25; 77:1–20). He explained that the thermostats in residents' rooms were wall-mounted dials allowing the user to set a range, but the dials did not display the actual ambient room temperature (5T82:5–25; 83:1–8). Mr. Palermo stated that when a room complaint was reported, maintenance would verify the actual temperature using a calibrated thermometer and make adjustments as necessary (5T83:9–25; 84:1–15).

10. Testimony of Director of Nursing Stacy Bates

Ms. Bates testified that she had been Meadowview's Director of Nursing for eight years, responsible for supervising LPNs and CNAs and ensuring both resident care and environmental safety (5T95:10–17; 96:1–12; 97:9–16). She explained that part of her responsibilities included conducting daily rounds, typically beginning at 8:30 a.m. on the Garden floor, during which she expected staff to report environmental issues such as heating or cooling problems (5T100:16–25; 101:20–25). She testified that she reviewed Meadowview's work-order log for February 2018 and confirmed that it contained no

maintenance requests concerning Room 158 during that period. The Court noted, however, that emergencies could be telephoned in and might not appear on the printed list (5T103:1–8; 103:41–104:9).

On cross-examination, Ms. Bates admitted she had no independent recollection of any heating issues in Ms. Santo's room on either February 7 or February 19, 2018, and confirmed that without a work order she had no memory of any heating problem at Meadowview during that month (5T107:4–25; 108:1–2). She also acknowledged that nurses sometimes used their own medical equipment and that they were permitted to do so (5T108:9–12). He testified that he reviewed the work orders for February 2018 and that no maintenance requests were submitted for Ms. Santo's room in the days leading up to her death (5T92:10–25; 93:1–6). Mr. Palermo admitted, however, that he did not personally measure the temperature in her room on February 19, 2018, and therefore could not state what the actual temperature was on that date (5T95:14–25; 96:1–7).

On further questioning, Mr. Palermo acknowledged that even if a thermostat dial was set to 70 degrees, the actual room temperature could vary based on outside conditions, windows, or system calibration. He confirmed that the thermostat dial does not provide an accurate measurement of room temperature (5T101:5–25; 102:1–8). He conceded that without an independent

thermometer reading, he could not confirm whether Ms. Santo's room was within regulatory limits on February 19 (5T104:10–25; 105:1–12). Mr. Palermo reiterated that his testimony was limited to general HVAC procedures and the absence of complaints, and he agreed that he could not say what the actual temperature in Ms. Santo's room was on the morning in question (5T111:5–25; 112:1–16; 115:7–25; 116:1–6; 121:3–25; 122:1–10). He was then excused (5T125:20–25).

11. Testimony of Dr. Alexander Makris, M.D.

Dr. Makris testified that he reviewed Ms. Santo's medical records, Meadowview records, deposition transcripts, and medical literature (6T13:4–18). He opined that Ms. Santo's hypothermia was not caused by environmental conditions but by altered thermoregulation associated with end-of-life decline (6T18:9–25; 19:1–12). He cited her dementia, poor oral intake, and weight loss as evidence of terminal decline, stating hypothermia is a "common terminal event" in elderly patients (6T19:13–25; 20:1–15; 21:4–20). Dr. Makris acknowledged that evening Klonopin doses were withheld on February 16, 17, and 18 because Ms. Santo was lethargic, but he testified this was appropriate nursing judgment and not a medication error. In his view, physician notification was warranted when the pattern continued into the morning of February 19 (6T27:10–25; 28:1–12; 29:10–25).

On cross-examination, he admitted the MAR reflected three consecutive days of withheld Klonopin and that no physician was contacted until February 19 (6T55:12–25; 56:1–8; 61:15–25). He acknowledged that repeated lethargy and being "cold to the touch" are changes of condition that require nursing assessment (6T60:15–25; 61:1–8), but maintained that contacting the doctor on February 19 was timely (6T74:20–25; 75:1–8). Dr. Makris conceded he could not rule out that Ms. Santo's room was cold on February 19, testifying only that he saw no documentation to support it (6T68:15–25; 70:5–15; 80:10–25). He was excused at the conclusion of his testimony (6T82:15–22).

12. Testimony of Nurse Kathlene Martin

Appellants included Nurse Kathlene Martin in their pretrial submissions, identifying her as a nursing expert to rebut the testimony of Nurse Tache. On day 6 of the trial, Appellants withdrew Ms. Martin as a trial witness (6T 241:19—242:7).

13. Testimony of Michelle Knudsen

Ms. Knudsen testified she became Meadowview's administrator on April 1, 2009, with overall responsibility for all departments, including environmental and life-safety oversight (6T141:20–22; 6T142:1; 6T145:1–11). She confirmed she was off duty on February 19, 2018, and received no calls that day about heating issues. She first learned at the February 20 morning meeting that Ms.

Santo had been hospitalized for hypothermia, and she began a review of the circumstances (6T149:10–14; 6T170:22–25; 6T171:1–2). As part of that review, Ms. Knudsen verified that the facility's video system retained about six to seven days of footage and checked for HVAC alarms, finding none (6T151:5–17; 6T152:1–2; 6T152:23–25). She testified she was told that the thermostat in Ms. Santo's room was set at 70 degrees, that her roommate did not feel cold, that Nurse Takako Potts did not think the room was cold, and that an EMT remarked the room was cold; no room transfer was made (6T153:1–12).

Ms. Knudsen described Meadowview's use of handheld infrared thermometers to take spot readings at resident level when a room complaint arose, but acknowledged such readings were sometimes undocumented. She confirmed that no written infrared reading was available for Ms. Santo's room around February 19 (6T219:21–25; 6T220:9–25; 6T221:1–6). She further testified that although she was on call "24/7," no one contacted her on February 19 about Ms. Santo's withheld Klonopin doses or lethargy (6T170:13–25; 6T224:11–19; 6T224:21–25). Finally, Ms. Knudsen explained she self-reports regulatory violations to the Ombudsman and Department of Health when warranted, but she did not make any report concerning an environmental issue for Ms. Santo because, in her view, "there was no issue" (6T170:8–25; 6T171:1–5).

14. Jury Receives the Case

In empowering the Jury to receive the case, Judge Walcoff provided the following instructions with consent of counsel for each party:

> "In this case, the plaintiff claims that the defendants violated the rights of Margaret Santo, as a nursing home resident, under the rights enumerated in the New Jersey Nursing Home Responsibilities and Rights of Residents Act. Specifically, the plaintiff asserts that the defendants violated Margaret Santo's rights as a nursing home resident as follows:
>
> The plaintiff asserts 1 that defendants violated N.J.S.A. -- that's just fancy words for New Jersey Statutes -- 30:13-5J, which states: 'Every resident of a nursing home shall have the right to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident, consistent with sound nursing and medical practices.'
>
> If you find that the defendants violated any of these rights, you have found a violation of the New Jersey Nursing Home Responsibilities & Rights of Residents Act and a violation of Ms. Margaret Santo's nursing home resident's rights. Thus, if you conclude that the defendants violated Margaret Santo's nursing home resident's rights, you must find for plaintiff on this issue. If you conclude that defendants did not violate Margaret Santo's nursing home resident's rights, then you must find for the defendants on this issue (6T 71:20—72:20)
>
> The verdict sheet asked:

- "Has the plaintiff, William J. Santo, as Administrator and Administrator *Ad Prosequendum* of the Estate of Margaret E. Santo, established by a preponderance of the evidence that defendants violated Ms. Santo's rights as a nursing home resident pursuant to the New Jersey Nursing Home Responsibilities and Rights of Residents Act?" (7T85:4–10).
- "What amount of money, if any, would fairly and reasonably compensate for plaintiff's damages resulting from the violation or

violations of Ms. Santo's rights as a nursing home resident pursuant to the New Jersey Nursing Home Responsibilities and Rights of Residents Act?" (7T85:19–24).

During deliberations, the jury first requested a copy of the statute, which the Court provided (7T81:1–7, 19–22). The jury later asked: "requesting guidance on defining damages? … is there a criteria used for a monetary award?" and the Court responded by re-reading the damages instruction (7T83:7–13, 19–23). The jury ultimately returned a verdict in Respondent's favor, answering "Yes" to Question 1 by an 8–0 vote and awarding $450,000 in damages on Question 2 by a 7–1 vote (7T87:10–15). In her May 10, 2024 written decision denying a new trial, Judge Walcoff reiterated:

- "The jury had before it credible testimony that the decedent's room was abnormally cold and that she was found hypothermic." (Da26–27).
- "Plaintiff introduced evidence that Meadowview failed to notify a physician after holding Klonopin for three days, in violation of resident care standards." (Da32).
- "There was testimony that Ms. Santo was observed to be cold to touch but no warming intervention was provided." (Da32).
- "Plaintiff presented testimony that nurses used personal thermometers which could not be calibrated, in violation of NHA standards." (Da33).

She concluded:

"Taken together, these violations of the Nursing Home Residents' Rights Act provided the jury with an ample basis for its verdict. Defendants' arguments seek to isolate one piece of evidence while ignoring others that independently supported the verdict." (Da33).

IV. LEGAL ARGUMENT

On February 19, 2018, Ms. Santo was discovered unresponsive in her room at Meadowview Nursing and Rehabilitation Center. When EMT Ryan Damore arrived, he immediately noted that the room was "cold, like an icebox" and colder than 70 degrees. He recorded these observations contemporaneously in his EMS report (2T121:14–2T122:24; Da27). At the emergency room, Dr. May diagnosed hypothermia with a rectal temperature of 89.9°F. Her chart documented hypothermia and relied on Damore's report of the cold environment (3T31:6–25; 3T54:19–25; Da28). Respondent's experts confirmed that such a drop in body temperature could not be explained by the dying process alone but was the result of environmental cold exposure (3T86:21–3T87:2).

Beyond the cold room, the jury also heard evidence of multiple other violations of the NHA:

- Failure to Notify a Physician of a Change in Condition. Nursing staff held Ms. Santo's Klonopin medication for three days but failed to notify her physician of this significant change (4T90:20–4T93:11; Da32).

- Failure to Intervene When Ms. Santo Was Cold to Touch. Staff observed Ms. Santo was cold but failed to provide blankets or warming interventions (4T22:15–22; 4T46:18–4T47:9; Da32).

- Improper Use of Non-Calibrated Personal Thermometers. Nurses used their own personal thermometers, which were not facility-calibrated and could not be verified for accuracy (4T45:13–24; 5T48:3–22; Da33).

1. The Trial Court Properly Denied Appellants' Motion for Judgment Notwithstanding the Verdict (Da20).

A. Standard of Review Requires Denial Unless No Rational Jury Could Find for Respondent.

A motion for judgment notwithstanding the verdict is governed by the same standard as a directed verdict. The Court must deny the motion if, giving Plaintiff the benefit of all reasonable inferences, there is any evidence upon which a rational jury could find in Plaintiff's favor. Dolson v. Anastasia, 55 N.J. 2, 5 (1969); Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). The trial court may not weigh evidence or assess credibility. *Id*. Here, Judge Walcoff correctly denied JNOV, finding that "reasonable minds" could indeed differ based on the record:

> "Viewing the evidence in the light most favorable to the plaintiff, there is sufficient evidence from which a reasonable jury could find that the Nursing Home Residents' Rights Act was violated… This is not a case where reasonable minds could only conclude for the defense. Accordingly, the Rule 4:40-1 motion is denied." (3/21/24 Tr. at 117:20–118:19).

Appellants invoke Dolson v. Anastasia, 55 N.J. 2 (1969), and Besler v. W. Windsor-Plainsboro Bd. of Educ., 201 N.J. 544 (2010), to argue that judgment notwithstanding the verdict should have been granted. But both decisions confirm the deferential standard that governs here. Dolson requires the evidence be viewed in the light most favorable to the non-movant, and Besler cautions that jury verdicts should stand absent a manifest injustice. Judge Walcoff

expressly applied Dolson, and found ample support for the jury's verdict: Damore's testimony that the room was "like an icebox" (2T122:12–25), Dr. May's rectal temperature diagnosis of hypothermia at 91.9°F (2T138:4–14), Dr. Starer's expert causation opinion (3T1990:4–14), and Nurse Tache's testimony establishing statutory violations (4T90:20–93:11). Under the standards set forth in Dolson and Besler, denial of JNOV was not only proper but required.

The trial judge correctly concluded that Respondent presented ample evidence of multiple, independent violations of the Nursing Home Responsibilities and Rights of Residents Act ("Residents' Rights Act"), N.J.S.A. 30:13-5(j). Appellants' challenge is therefore nothing more than an attempt to have this Court re-weigh the evidence, something neither the trial court nor this Court may do on a JNOV motion. Dolson, 55 N.J. at 6.

B. The Record Established Multiple Independent Statutory Violations.

Appellants argue that the only evidence of a violation was EMT Damore's use of the phrase "icebox" to describe the room (Appellants' Brief at 23–25). They insist that this single remark cannot sustain the verdict. The record proves otherwise. Judge Walcoff identified four separate violations of the NHA, each independently sufficient to sustain the jury's verdict:

- The decedent's room was abnormally cold and she was found hypothermic (2T121:14–2T122:24; 3T31:6–25; Da26–27).

- Meadowview failed to notify a physician after withholding Klonopin for three days (4T90:20–4T93:11; Da32).
- Staff observed Ms. Santo was cold to touch but provided no intervention (4T22:15–22; 4T46:18–4T47:9; Da32).
- Nurses used personal thermometers which could not be calibrated, in violation of standards (4T45:13–24; 5T48:3–22; Da33).

Defendants' reliance on Ptaszynski v. Atl. Health Sys., Inc., 440 N.J. Super. 24 (App. Div. 2015), is misplaced. Ptaszynski recognizes that expert testimony may establish deviations from statutory and regulatory requirements. That is exactly what occurred here. Nurse Tache testified that Meadowview violated the NHA by failing to notify a physician after Klonopin was withheld for three days and by using uncalibrated personal thermometers (4T90:20–93:11; 5T48:3–22). Dr. Starer then linked those failures to Ms. Santo's hypothermia and subsequent decline (3T1990:4–14). Far from undermining plaintiff's case, Ptaszynski confirms it.

Appellants invoke Aiello v. Myzie, 88 N.J. Super. 187 (App. Div. 1965), to argue conjecture cannot substitute for evidence. But plaintiff's case was built on objective proof: a rectal temperature of 91.9°F (2T138:4–14), EMS testimony that the room was "like an icebox" (2T122:12–25), and expert testimony linking cold exposure to hypothermia (3T1990:4–14). This was not conjecture but precisely the record-based showing Aiello requires.

i. Cold Environment and Hypothermia

The Act guarantees every nursing home resident "a safe and decent living environment" and "considerate and respectful care… consistent with sound nursing and medical practices." N.J.S.A. 30:13-5(j). The jury was entitled to find that Meadowview failed to meet this standard. Mr. Damore's eyewitness testimony that the room was "cold, like an icebox" (2T121:14–2T122:24), combined with Dr. May's rectal temperature reading of 89.9°F (3T31:6–25), established hypothermia. Dr. Starer explained to the jury that such hypothermia was environmentally induced, not a random medical event (3T86:21–3T87:2). This testimony, if credited, directly proved a violation of the statutory duty to provide a safe environment.

Appellants' own witnesses confirmed that no reliable ambient temperature measurement was taken. Mr. Palermo admitted no room temperature was measured (5T95:14–25). Ms. Knudsen conceded the facility only retained thermostat set points (5T112:6–14). Ms. Potts acknowledged that a wall thermostat reflects only a target, not the actual ambient temperature (4T136:2–8). Nurse Tache testified that state regulations required facilities to maintain 71–81°F and to use calibrated devices to ensure compliance (4T45:13–24). Under Dolson, this was more than "some evidence." It was a consistent body of testimony, from both Respondent's and Appellants' witnesses, that Meadowview failed to provide a safe and decent environment. The jury was entitled to credit

that testimony and reject Appellants' contrary suggestions.

Taken together, this testimony established that Meadowview failed to maintain a safe and decent living environment, as required by N.J.S.A. 30:13-5(j).

ii. Failure to Notify Physician of Medication Issue

The Act also requires "sound nursing and medical practices." Withholding a controlled medication for three days without physician involvement is plainly unsound. Nurse Foltz testified Klonopin was withheld for three consecutive days without notice (5T36:1–25; 5T67:14–25). That failure, standing alone, permitted a finding of violation. Moreover, the issue was not disputed. Nurse Foltz conceded it was improper. Dr. Makris, Appellants' own expert, admitted he could not rule out that the lapse contributed to Santo's instability (6T204:10–17). This is precisely the kind of factual dispute for a jury to resolve.

Under Brill, JNOV was not available where Respondent offered testimony that, if believed, satisfied the statutory standard. A rational jury could conclude that depriving an elderly resident of a prescribed anti-seizure medication, without medical oversight, violated the Act.

iii. Failure to Intervene Despite Visible Cold Stress

The duty of "considerate and respectful care" encompasses prompt intervention when a resident exhibits signs of distress. Here, Nurse Foltz

admitted that at the hospital Santo was "cold to the touch" (5T42:13–20). Ms. Potts conceded she failed to record vital signs in the hours leading up to her collapse (4T138:4–12). This evidence allowed the jury to conclude that staff ignored obvious signs of cold stress and failed to act. Even if Appellants argued that the staff did not perceive hypothermia developing, the jury was entitled to credit the testimony that no interventions or proper monitoring were performed. The lack of timely response further supported a finding that Meadowview failed to provide considerate and respectful care under the Act.

iv. Unsafe Practices in Monitoring Temperature

Finally, the jury heard evidence that Meadowview relied on uncalibrated, personal thermometers to monitor temperatures. Ms. Bates conceded staff used their own devices, which could not be calibrated (5T108:9–12). Nurse Tache confirmed that this practice violated Department of Health regulations and was not "sound nursing practice" (4T45:13–24). This testimony provided yet another independent ground for liability. The statute expressly requires care consistent with sound practices. A rational jury could conclude that Meadowview's reliance on improper equipment was a systemic violation of the Act, regardless of whether it caused hypothermia in this case.

Judge Walcoff expressly recognized all four of the Act violations in her written decision:

> "Taken together, these violations of the Nursing Home Residents' Rights Act provided the jury with an ample basis for its verdict. Defendants' arguments seek to isolate one piece of evidence while ignoring others that independently supported the verdict." (Da33).

C. Ample Evidence Supported the Jury's Finding of a Violation.

Appellants argue that even the "cold room" evidence was insufficient (Appellants' Brief at 26). The testimony shows otherwise:

- EMT Damore: "It was cold, like an icebox" and colder than 70°F (2T121:14–2T122:24).
- Dr. May: diagnosed hypothermia, rectal temperature 89.9°F, charted hypothermia diagnosis (3T31:6–25; 3T54:19–25; Da28).
- Dr. Starer: opined that hypothermia was caused by environmental cold exposure (3T86:21–3T87:2).
- Nurse Tache: testified regulations required ambient temperatures of 71–81°F (4T45:13–24).

The jury charge asked only whether "the NHA was violated" and instructed that damages could be awarded if so (6T254:19–23; Da20).

No special interrogatories required jurors to identify which violation they credited. Accordingly, the general verdict must be upheld so long as any of the four violations are supported. Verdicchio v. Ricca, 179 N.J. 1, 24 (2004).The trial court correctly instructed the jury on the statutory standard and provided a two-question verdict sheet. Question 1 asked whether Appellants violated Ms. Santo's rights under the Act; Question 2 asked what damages would fairly and reasonably compensate her estate (7T85:4–24).

During deliberations, the jury requested a copy of the statute, which the Court provided (7T81:1–7, 19–22). They later asked for guidance on damages, to which the court re-read the instruction with consent of both counsel (7T83:7–23; 7T84:1–5). The jury then returned its completed verdict sheet, finding liability by a unanimous 8–0 vote and awarding $450,000 in damages by a 7–1 vote (7T87:10–15). Judge Walcoff summarized:

> "The jury had before it credible testimony that the decedent's room was abnormally cold and that she was found hypothermic." (Da26–27).

This record was more than sufficient to sustain the jury's finding.

D. Appellants' Attacks on Expert Testimony Go to Weight, Not Admissibility.

Appellants also claim that Respondent's expert testimony was a "net opinion" and unreliable (Appellants' Brief at 27). Appellants rely on Delvecchio v. Twp. of Bridgewater, 224 N.J. 559 (2016), and Townsend v. Pierre, 221 N.J. 36 (2015), to claim Dr. Starer's causation testimony was speculative. Those cases prohibit experts from offering opinions divorced from the record or contradicted by undisputed evidence. Here, no such contradiction exists. Dr. Starer grounded his opinion in concrete facts: a rectal temperature of 91.9°F (2T138:4–14), EMS observation that the room felt "like an icebox" (2T122:12–25), contemporaneous ER notes, and the decedent's clinical course (3T1990:4–14). He also ruled out alternative causes. This was reliable differential diagnosis,

not speculation.

Under Townsend v. Pierre, 221 N.J. 36, 55 (2015), an expert opinion is not inadmissible so long as the expert explains the basis for the conclusion. Any factual disputes go to the weight of the testimony, not its admissibility. Here, Dr. Starer explained why hypothermia was caused by environmental exposure (3T86:21–3T87:2). Nurse Tache testified how Meadowview's failures violated the NHA, including failure to notify physicians and reliance on non-calibrated thermometers (4T90:20–4T93:11; 5T48:3–22). Judge Walcoff rejected the net opinion claim:

> "Plaintiff's experts provided sufficient factual bases for their conclusions. Any disputes as to the facts were for the jury, not the Court, to resolve." (Da32–33).

The testimony was properly admitted and weighed by the jury. The jury was entitled to weigh credibility and did so. JNOV was properly denied.

E. Conclusion on JNOV

This record provided more than sufficient evidence of statutory violations. The trial court correctly denied Appellants' motion for JNOV.

2. The Trial Court Properly Denied Appellants' Motion for a New Trial (Da20).

A. Standard of Review.

New Jersey courts consistently emphasize the high bar for disturbing a jury verdict on a motion for a new trial. In Baxter v. Fairmont Food Co., 74 N.J.

588, 597–98, 379 A.2d 225 (1977), the Court held that a trial court's ruling on such a motion is entitled to great deference and may not be disturbed absent a clear miscarriage of justice under the law (holding that a trial court's ruling on a motion for new trial is entitled to great deference and will not be disturbed absent a clear miscarriage of justice under the law; jury verdicts are to be upheld where supported by adequate evidence.) Similarly, in Carrino v. Novotny, 78 N.J. 355, 360, 396 A.2d 561 (1979), the Court explained that appellate courts should not disturb jury findings unless they are clearly against the weight of the evidence or result in a miscarriage of justice (stating that appellate courts should not disturb a jury's findings unless they are clearly against the weight of the evidence or result in a miscarriage of justice). Most recently, in Hayes v. Delamotte, 231 N.J. 373, 386, 176 A.3d 831 (2018), the Supreme Court reaffirmed under Rule 4:49-1(a) that new trial motions should be granted only when it clearly and convincingly appears there was a miscarriage of justice under the law, and emphasized that appellate courts must defer to the trial judge's unique "feel of the case."

A trial court may grant a new trial only if the verdict "clearly and convincingly appears to constitute a miscarriage of justice." Dolson, 55 N.J. at 6–7; R. 4:49-1(a). On appellate review, the same standard applies. Baxter, 74 N.J. at 597–98. The standard is a demanding one. Appellate courts are "not to

substitute [their] judgment for that of the jury," and must defer to the trial judge's "feel of the case." Risko v. Thompson Muller Auto. Group, Inc., 206 N.J. 506, 521, 20 A.3d 1094 (2011) (reaffirming that courts must give the non-moving party the benefit of all reasonable inferences on a motion for judgment; judgment as a matter of law is appropriate only where no rational jury could find for the non-movant). As the Court reaffirmed in Moody v. Jersey City Bd. of Educ., 247 N.J. 214, 235 (2021), new trial motions "call for substantial deference to the trial court's ruling" because the trial judge uniquely observed the evidence and witnesses firsthand.

This standard reflects the principle that jury verdicts are entitled to great respect and may be disturbed only in extraordinary circumstances. *See* Carrino, 78 N.J. at 360 (verdict disturbed only if it "shocks the conscience"); Fritsche v. Westinghouse Elec. Corp., 55 N.J. 322, 330, 261 A.2d 657 (1970) (same). In Ptaszynski v. Atl. Health Sys., Inc., 440 N.J. Super. 24, 46 (App. Div. 2015), the Appellate Division emphasized that where "ample evidence" supports a verdict, a losing party's disagreement with the weight of that evidence is not grounds for reversal.

B. The Verdict Was Supported by the Weight of the Evidence.

Defendants cite Carey v. Piphus, 435 U.S. 247 (1978), a §1983 procedural-due-process case, to argue damages must be proven with certainty.

Carey has no bearing on claims under the Nursing Home Act. More importantly, damages here were supported by evidence of both physical harm and statutory rights violations. The jury awarded $450,000 based on testimony that Ms. Santo was subjected to dangerous conditions, suffered hypothermia, and experienced a precipitous decline. That award was tied to credible evidence, rendering Carey inapposite.

Here, the record here offered multiple, independent bases for the jury's liability finding, each amply supported by the testimony. Judge Walcoff captured the point directly in denying Appellants' post-trial motions:

> "Taken together, these violations of the Nursing Home Residents' Rights Act provided the jury with an ample basis for its verdict. Defendants' arguments seek to isolate one piece of evidence while ignoring others that independently supported the verdict." (Da33).

The evidence concerning the cold environment was compelling. EMT Damore testified the room was "cold, like an icebox" (2T121:14–2T122:24). Dr. May confirmed hypothermia with a rectal temperature of 89.9°F and testified that immediate warming was required (3T31:6–25). Dr. Starer explained that the hypothermia was environmentally induced and precipitated Santo's decline (3T86:21–3T87:2). Even Appellants' witnesses corroborated this. Mr. Palermo admitted no actual room temperature was measured (5T95:14–25). Ms. Knudsen testified the facility retained only thermostat set-points, not actual room readings (5T112:6–14). Nurse Potts confirmed that a thermostat reflects only a target

setting, not the actual ambient temperature (4T136:2–8). From this consistent testimony, the jury had ample grounds to conclude that Meadowview failed to provide a safe and decent living environment. As Carrino and Fritsche teach, conflicting testimony is for the jury, not the appellate court, to resolve.

The jury also heard undisputed evidence that Klonopin was withheld for three consecutive days without physician notification. Nurse Foltz testified to this lapse and admitted it violated nursing standards (5T36:1–25; 5T67:14–25). Appellants' own expert Dr. Makris conceded he could not rule out that this contributed to Ms. Santo's instability (6T204:10–17). As in Ptaszynski, where testimony provided "ample evidence" of negligence despite defense arguments to the contrary, here the jury was free to credit this testimony as an independent violation of the Act. The jury further heard that staff failed to intervene despite visible signs of cold stress. Nurse Foltz acknowledged that upon arrival at the hospital Santo was "cold to the touch" (5T42:13–20). Nurse Potts admitted she had not recorded vital signs in the hours before Ms. Santo's collapse (4T138:4–12). From this evidence the jury could reasonably conclude that staff disregarded obvious signs of distress, violating the duty of considerate and respectful care. This conclusion, rooted in credibility determinations, is precisely the kind of finding that appellate courts are not free to disturb. Risko, 206 N.J. at 522.

Finally, the jury heard testimony about unsafe temperature monitoring

practices. Ms. Bates conceded that staff relied on personal thermometers that could not be calibrated (5T108:9–12). Nurse Tache confirmed that this practice violated Department of Health regulations and was inconsistent with sound nursing practice (4T45:13–24). Nurse Potts further admitted that she personally used her own household thermometer to take resident body temperatures (4T136:2–8). The jury could reasonably view these practices as both systemically and individually deficient. Even if Appellants offered contrary explanations, it was for the jury to decide which evidence to credit. Baxter, 74 N.J. at 597–98.

C. The Jury's Deliberations Confirmed the Reliability of the Verdict.

The jury's own conduct confirmed the reliability of its verdict. During deliberations they submitted two written questions. The first requested a copy of the statute, stating: "Request copy of New Jersey Statute for, quote, 'N.J. Nursing Home Responsibilities & Rights of Residents Act.'" (7T81:2–5). The Court provided a reference to the relevant provision of the statute with counsels' agreement (7T81:19–22). The second note asked: "requesting guidance on defining damages? … is there a criteria used for a monetary award?" (7T83:7–10). The Court responded by re-reading the damages instruction: "In the event you find in plaintiff's favor as to a violation of the New Jersey Nursing Home Responsibilities and Rights of Residents Act, you may award damages that

would fairly and reasonably compensate for plaintiff's damages resulting from the violation of plaintiff's nursing home rights." (7T83:11–17). Both counsel expressly agreed this was appropriate (7T83:17–84:3).

The jury then returned a verdict finding liability by an 8-0 vote and awarding $450,000 in damages by a 7-1 vote (7T87:10–15). As the Court explained in Verdicchio v. Ricca, 179 N.J. 1, 38 (2004), jurors are presumed to follow instructions. Here, they not only followed them but demonstrated diligence by asking thoughtful questions and deliberating carefully. Judge Walcoff, who presided over the trial and observed all witnesses, expressly found ample evidence to support the verdict:

- "The jury had before it credible testimony that the decedent's room was abnormally cold and that she was found hypothermic." (Da26–27).
- "Plaintiff introduced evidence that Meadowview failed to notify a physician after holding Klonopin for three days, in violation of resident care standards." (Da32).
- "There was testimony that Ms. Santo was observed to be cold to touch but no warming intervention was provided." (Da32).
- "Plaintiff presented testimony that nurses used personal thermometers which could not be calibrated, in violation of NHA standards." (Da33).

She concluded:

"Taken together, these violations of the Nursing Home Residents' Rights Act provided the jury with an ample basis for its verdict. Defendants' arguments seek to isolate one piece of evidence while ignoring others that independently supported the verdict." (Da33).

This finding is entitled to great deference. The jury was presented with competing evidence, and it was within their province to credit Respondent's witnesses and experts. There is no basis to disturb their verdict.

D. Judge Walcoff's Reasoned Denial of the New Trial Motion.

Appellants finally argue that the $450,000 award was excessive and shocks the conscience. (Appellants' Br. at 32–33). The record shows otherwise. Family testimony established that before the hypothermia incident, Ms. Santo enjoyed music, activities, and meaningful interaction. After the incident, she lost responsiveness and no longer engaged (5T112:7–5T118:9). The jury credited this evidence in awarding damages for her loss of dignity, enjoyment of life, and conscious suffering. Judge Walcoff squarely rejected the excessiveness claim, finding:

> "The verdict does not shock the conscience. It was supported by testimony regarding Ms. Santo's baseline condition and the drastic decline she suffered. The damages awarded were fairly related to the injury proved." (Da33).

Comparable verdicts under the Nursing Home Residents' Rights Act have been upheld. In Moody v. Voorhees Care & Rehab. Ctr., 2021 N.J. Super. Unpub. LEXIS 267 (App. Div. 2021), the Appellate Division affirmed a six-figure NHA verdict. In Ptaszynski v. Atl. Health Sys., 440 N.J. Super. 24, 37 (App. Div. 2015), the court confirmed that the NHA provides an independent statutory basis

for compensatory damages. Here, the award was tethered to the record and well within the jury's broad discretion. It does not "shock the conscience" and must be affirmed.

Appellants' argument also ignores that the trial court had already barred punitive damages and fee-shifting under the Tort Claims Act. Judge Walcoff ruled that Respondent could pursue only compensatory damages and excluded any consideration of punitive damages, treble damages, or statutory attorneys' fees (3/25/24 Tr. at 196:17–198:18). The jury therefore considered only actual damages, which makes the award even more modest and reasonable in light of the harm suffered. The trial court's pretrial ruling stripped away all other potential remedies. In this context, the $450,000 verdict represents the jury's measured assessment of compensatory damages alone, and it cannot be said to shock the conscience.

E. Conclusion on New Trial.

Judge Walcoff concluded that "[t]aken together, these violations of the Nursing Home Residents' Rights Act provided the jury with an ample basis for its verdict" and that "[t]he verdict does not shock the conscience. It was supported by testimony regarding Ms. Santo's baseline condition and the drastic decline she suffered. The damages awarded were fairly related to the injury proved." (Da33). Her determination is entitled to great weight. Moody, 247 N.J.

at 235; Risko, 206 N.J. at 521. Appellants have not shown any basis to disturb it.

3. The Damages Award Was Reasonable and Supported by the Record (Da20-Da48).

A. Standard for Reviewing Damages

A jury's damages award is entitled to substantial deference. It may be set aside only if it is "so disproportionate to the injury and resulting disability shown as to shock the judicial conscience and to convince the court that to sustain the award would be manifestly unjust." Baxter, 74 N.J. at 596. Appellate courts "must give deference to the jury's assessment of damages" and "consider the trial court's ruling on the new trial motion with due regard to its feel of the case." Cuevas v. Wentworth Group, 226 N.J. 480, 501 (2016). See also He v. Miller, 207 N.J. 230, 248 (2011) (damage awards are "entitled to a presumption of correctness").

Appellants invoke Risko v. Thompson Muller Auto. Grp., 206 N.J. 506 (2011), and Moody v. Voorhees Care & Rehab. Ctr., 2021 N.J. Super. Unpub. LEXIS 267, to argue the jury's $450,000 award was excessive. But Risko emphasizes that damages are not to be disturbed unless they constitute a manifest injustice. Judge Walcoff expressly found the award "fairly related to the injury proved" and not shocking to the judicial conscience (Da32–Da33). Moody is unpublished and distinguishable: there, no statutory violation was

shown; here, the record demonstrated multiple independent NHA breaches, including failure to notify a physician after three days of withheld Klonopin (4T90:20–93:11), reliance on uncalibrated thermometers (5T48:3–22), and failure to act when Ms. Santo was observed cold to the touch (4T34:20–25). Those violations fully supported the jury's award.

B. The Record Supported the $450,000 Award.

The jury heard compelling testimony about Ms. Santo's baseline condition before February 19, 2018, and her decline afterward. William Santo testified that his mother enjoyed music, television, and family interaction, and that she was responsive and engaged before the hypothermia event (2T38:1–20; 5T112:7–5T118:9). Afterward, she became largely unresponsive, withdrawn, and deteriorated until her death. Dr. Starer explained that hypothermia in a frail elder was environmentally induced and caused her drastic decline (3T86:21–3T87:2). Nurse Tache testified that loss of warmth and failure to provide a safe environment deprived Santo of dignity in her final days (4T45:13–24). This evidence fully supported damages for conscious suffering, loss of dignity, and enjoyment of life. Judge Walcoff recognized the sufficiency of this record, concluding:

> "The verdict does not shock the conscience. It was supported by testimony regarding Ms. Santo's baseline condition and the drastic decline she suffered. The damages awarded were fairly related to the injury proved." (Da33).

This finding is entitled to significant weight on appeal. Moody, 247 N.J. at 235; Baxter, 74 N.J. at 597–98.

C. The Award Was Modest in Context.

The $450,000 verdict was measured and reasonable in light of the harm. Appellants ignore that the trial court had already barred punitive damages and fee-shifting under the Tort Claims Act. Judge Walcoff ruled that Respondent could pursue only compensatory damages and excluded punitive damages, treble damages, and statutory attorneys' fees (3/25/24 Tr. at 196:17–198:18). Thus the jury considered only actual damages. As Judge Walcoff explained: "The damages awarded were fairly related to the injury proved." (Da33).

Comparable verdicts confirm the award's reasonableness. In Moody v. Voorhees Care & Rehab. Ctr., 2021 N.J. Super. Unpub. LEXIS 267, the Appellate Division affirmed a six-figure verdict under the Residents' Rights Act. In Ptaszynski, 440 N.J. Super. at 37, the court confirmed that the Act provides an independent statutory basis for compensatory damages. The award here fell squarely within the broad discretion afforded to juries assessing intangible losses. Cuevas, 226 N.J. at 500–01.

D. Conclusion on Damages.

Appellants cite Kita v. Borough of Lindenwold, 305 N.J. Super. 43 (App. Div. 1997), for the uncontroversial rule that damages must be causally linked to

statutory violations. Plaintiff satisfied that burden. Nurse Tache and Dr. Starer testified that Meadowview's breaches directly contributed to Ms. Santo's hypothermia and decline (4T90:20–93:11; 5T48:3–22; 3T1990:4–14). The jury's damages award was firmly grounded in this evidence, consistent with Kita.

The record demonstrated profound injury, the jury deliberated carefully, and Judge Walcoff expressly found that the verdict was supported by the evidence and not excessive. Under Baxter, Cuevas, and Moody, the Appellate Division must defer to that judgment. The $450,000 award does not shock the conscience and should be affirmed.

4. Appellants Waived Their Appellate Objections Through Consent, Failure to Object, and Invited Error (Da18-Da19, Da20-48, Pa1-4).

A. Appellate review is barred where counsel consented, failed to object, or induced the rulings.

Appellants argue that the trial was tainted by prejudicial testimony and erroneous instructions and that these issues may be reviewed even absent objections below. (Appellants' Br. at 11–14). That argument misstates the law. Issues not raised in the trial court are generally not considered on appeal. Nieder v. Royal Indem. Co., 62 N.J. 229, 234 (1973). Absent a preserved objection, the standard is plain error, requiring a showing that the alleged error was clearly

capable of producing an unjust result. R. 2:10-2.

Even more restrictive is the doctrine of invited error. A party may not induce or consent to a ruling at trial and then argue on appeal that the ruling was erroneous. State v. Jenkins, 178 N.J. 347, 358 (2004). Parties also may not "play fast and loose" by agreeing to procedures and then seeking to overturn them. Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 503 (1996). That principle controls here. Appellants did not merely fail to object to the challenged rulings; they affirmatively consented to them. As Judge Walcoff observed in denying JNOV:

> "There were no objections raised to the procedures or to the jury charge at the time of trial. The Court was satisfied that the instructions fairly presented the issues." (Da30).

B. Appellants Agreed to the Neutral Statement of the Case and Waived Objections to Hypothermia References.

Appellants argue that the case was improperly framed around hypothermia caused by a cold room and that this was unfairly prejudicial. (Appellants' Br. at 17–19). The record shows the opposite. At the pretrial conference, the court read a neutral statement of the case identifying hypothermia as the central issue, and Appellants expressly agreed. Having consented, Appellants cannot now claim prejudice. Judge Walcoff later confirmed that this framing was supported by trial evidence:

> "The jury had before it credible testimony that the decedent's room was abnormally cold and that she was found hypothermic." (Da26–27).

C. Appellants Stipulated to Jury Procedures and Voir Dire.

Appellants also challenge jury selection procedures, but the record shows Appellants explicitly consented. They agreed to proceed with an eight-person jury and to the 7–1 verdict rule. They raised no objection when *voir dire* was conducted under procedures approved by the Court. In denying JNOV, Judge Walcoff confirmed:

> "Counsel raised no objections to the procedures or jury charge. The Court was satisfied the jury was properly instructed and empaneled." (Da30).

D. Appellants Accepted the Rulings on Motions in Limine, Including Damore's "Icebox" Testimony.

Appellants cite Konop v. Rosen, 425 N.J. Super. 391 (App. Div. 2012), to argue Damore's description was inadmissible lay opinion. But Judge Walcoff applied N.J.R.E. 701 and Rule 403 with precision, finding the testimony rationally based on Damore's perception and helpful to the jury. After reviewing the testimony line by line, the court concluded: "The term 'icebox' correlates to what he's saying … What he's saying is she was very cold … So the motion to bar use of the word icebox is denied." (3/15/24 Tr. 27:14–22). That careful discretionary ruling fully satisfies Konop.

Appellants cite State v. McLean, 205 N.J. 438 (2011), which involved a police officer straddling lay and expert roles. Here, EMT Damore testified solely as a lay witness to what he personally observed. His description of the room as an "icebox" was rationally based on his perception, not expert inference, and properly admitted under Rule 701.

Appellants' reliance on Klawitter v. City of Trenton, 395 N.J. Super. 302 (App. Div. 2007), is misplaced. Klawitter emphasizes the broad discretion trial courts enjoy in evidentiary rulings. Judge Walcoff exercised that discretion meticulously, sustaining some objections to Dr. Starer's testimony and overruling others, and directing edits to his deposition video accordingly (3/15/24 Tr. 41:12–18; 49:6–10; 51:3–12; 67:14–22). That is the gatekeeping function Klawitter envisions.[1]

Appellants also challenge EMT Damore's description of the room as "cold, like an icebox." (Appellants' Br. at 23–25). But this issue was resolved pretrial. Judge Walcoff ruled the testimony admissible, explaining:

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[1] Appellants further cite Lerakis v. Aluotto, 2017 N.J. Super. Unpub. LEXIS 191 (App. Div. 2017), but unpublished decisions are non-precedential under R. 1:36-3. In any event, Lerakis involved pervasive evidentiary error. Here, Judge Walcoff's rulings were careful and limited. Finally, Appellants cite State v. Coley, 2011 N.J. Super. Unpub. LEXIS 2518 (App. Div. 2011), for the proposition that prejudicial evidence warrants reversal. Coley is also an unpublished opinion and inapposite. Unlike in Coley, where inadmissible evidence was admitted wholesale, Judge Walcoff excluded some evidence, admitted other portions, and provided detailed reasoning, that is the exact gatekeeping role our courts require.

> "The EMT's testimony that the room was cold and that he described it as an 'icebox' is highly probative and not unduly prejudicial. It goes to the very condition in dispute. The jury can weigh it." (3/15/24 Tr. at 20:5–10; Da18).

In her written opinion, she reiterated:

> "The EMT's testimony was probative evidence of the environment, subject to cross-examination, and admissible under N.J.R.E. 701." (Da27).

Appellants cannot now disavow a ruling they accepted and never challenged at trial.

E. Appellants Accepted the Jury Charge Without Objection.

Appellants further contend that the jury charge was misleading because it consolidated violations into a single question. (Appellants' Br. at 28–29). The record shows the opposite. At the charge conference, the court read the proposed instruction on damages. Both parties agreed, and the charge was delivered without objection. Judge Walcoff later explained:

> "The charge presented the statutory standard. The jury was asked whether the NHA was violated, and, if so, to award damages. No error was preserved at trial." (Da30).

Appellants' reliance on State v. Nantambu, 221 N.J. 390 (2015), is misplaced. Nantambu arose in a criminal murder trial, where the Supreme Court applied Rule 2:10-2 to reverse after voir dire errors directly compromised the defendant's constitutional right to an impartial jury. That context is fundamentally different from a civil Nursing Home Act action. The rulings

challenged here are routine evidentiary and procedural matters, reviewed for abuse of discretion, and in any event were reasoned on the record. Unlike the structural defect in Nantambu, nothing in this record was "clearly capable of producing an unjust result" within the meaning of Rule 2:10-2.

F. The Invited Error Doctrine Bars Appellants' Claims.

The invited error doctrine forecloses Appellants' appellate challenges. The Supreme Court has explained that "trial errors which were induced, encouraged or acquiesced in, or consented to by Appellants ordinarily are not a basis for reversal on appeal." Jenkins, 178 N.J. at 358. The doctrine exists to prevent parties from strategically consenting to rulings at trial and then seeking reversal if the outcome is unfavorable. Brett, 144 N.J. at 503. That is exactly what occurred here. Appellants affirmatively agreed to the neutral statement of the case, the jury procedures, the verdict rule, the admission of key testimony, the jury charge, and the handling of jury questions. These were not oversights. Rather, they were conscious choices.

Having embraced the very rulings they now contest, Appellants are barred from attacking them on appeal.

G. Appellants Consented to the Verdict Sheet and Jury Notes.

Appellants also challenge the verdict sheet and the Court's responses to

jury notes. But again, the record demonstrates consent. The verdict sheet was reviewed at the charge conference, agreed to by both parties, and submitted to the jury without objection. When the jury requested a copy of N.J.S.A. 30:13-5(j), the Court provided it with counsels' agreement. When the jury asked for clarification on damages, the court re-read its instruction, again with counsels' consent. Judge Walcoff summarized in her decision:

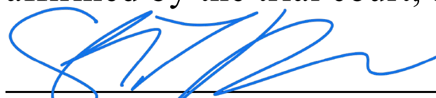
> "The jury was properly instructed, and clarifications were given with counsel's express consent. There is no basis to conclude the jury was misled or confused." (Da30).

H. Conclusion on Waiver and Invited Error.

Appellants' appellate challenges are foreclosed by their own conduct at trial. They consented to the framing of the case, the jury selection procedures, the admission of testimony, the charge, the verdict sheet, and the court's responses to jury questions. As Judge Walcoff concluded, "[t]here were no objections raised to the procedures or to the jury charge at the time of trial. The Court was satisfied that the instructions fairly presented the issues." (Da30). Under Nieder, 62 N.J. at 234, unpreserved objections are barred absent plain error, and under Jenkins, 178 N.J. at 358, invited error cannot be a basis for reversal. Appellants cannot consent at trial and then recast those same decisions as error on appeal.

V. CONCLUSION

The jury's verdict was firmly grounded in the evidence and carefully supervised by the trial court. The record established multiple, independent violations of the Nursing Home Residents' Rights Act, each sufficient to support liability. The jury deliberated conscientiously, asked for the governing statute and clarification on damages, and returned a measured award of $450,000. The award was modest in light of the trial court's pretrial ruling that punitive damages, treble damages, and attorney fee-shifting were barred under the Tort Claims Act. Respondent was limited to compensatory damages only. The jury charge, the verdict sheet, and the verdict itself all reflected that limitation. The damages awarded were therefore fairly related to the injury proved and carefully tethered to the evidence. Judge Walcoff determined that the verdict was supported by the evidence, that it did not shock the conscience, and that the damages were fairly related to the injuries proved. Appellants' claims are procedurally barred by waiver and invited error, and in any event lack merit. There was no miscarriage of justice. The verdict was supported by the record, affirmed by the trial court, and should be sustained in full.



Steven L. Procaccini, Esq.
PROCACCINI LAW GROUP, LLC
Attorneys for Respondent

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